

90-325

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.

FILED

AUG 15 1990

JOSEPH F. SPANIOL, JR.
CLERK

October, 1990 TERM

FREEPORT TRANSPORT, INC., Petitioner

vs.

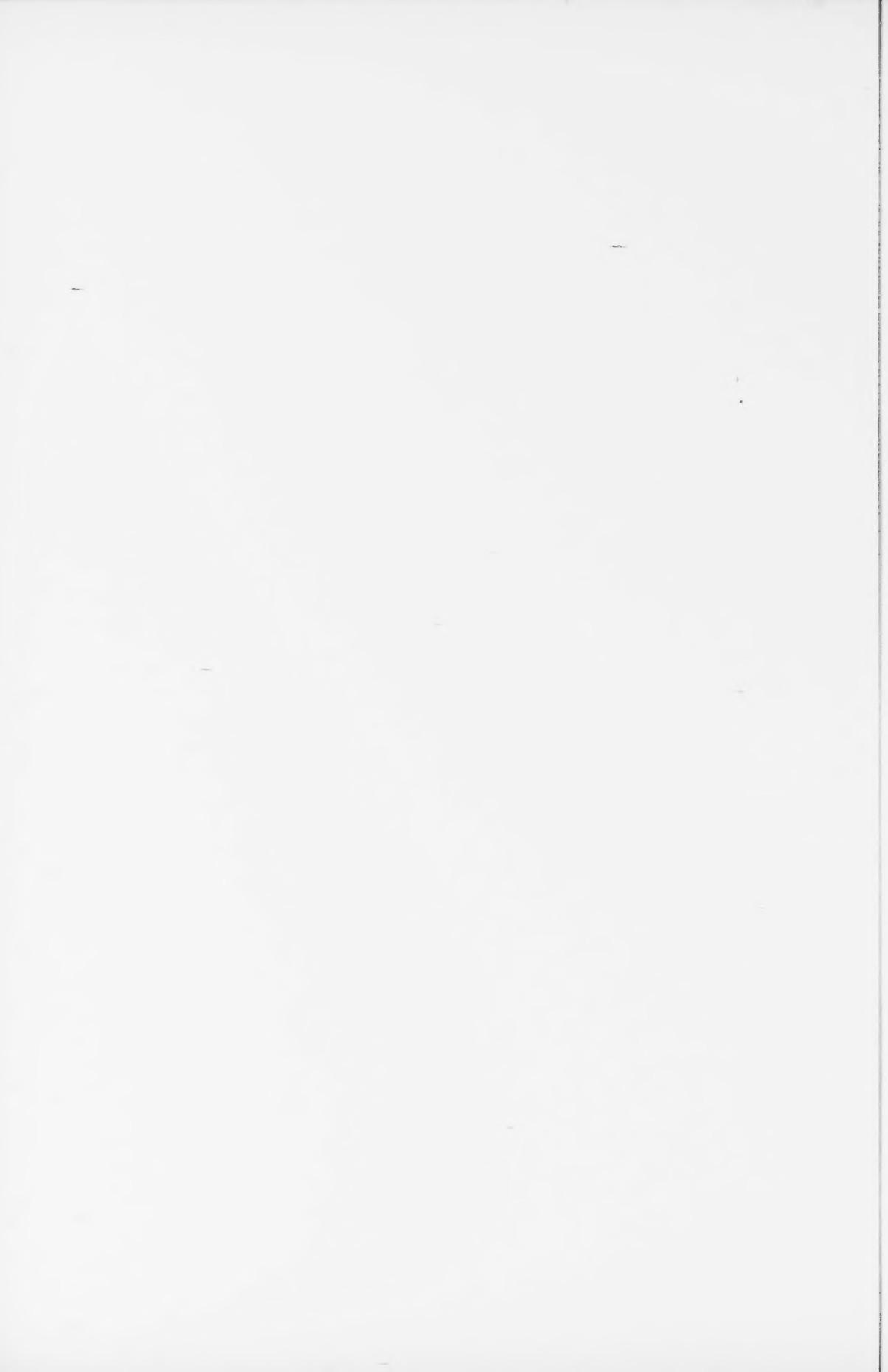
INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMAN AND HELPERS OF
AMERICA; AND LOCAL 538, GENERAL TEAMSTER,
CHAUFFEURS, WAREHOUSEMEN AND HELPERS
AFFILIATED WITH THE INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN, AND HELPERS OF AMERICA,

Respondents

PETITION FOR WRIT OF CERTIORARI TO
THE SUPREME COURT OF PENNSYLVANIA

PETITION FOR WRIT OF CERTIORARI TO
THE SUPREME COURT OF THE UNITED STATES

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QUESTIONS PRESENTED FOR REVIEW

1. DOES SECTION 6 OF THE NORRIS-LA GUARDIA ACT, 29 U.S.C.A. SECTION 106, REQUIRE THAT AN INTERNATIONAL UNION BE SUBJECT TO CIVIL LIABILITY FOR STRIKE-RELATED DAMAGES WHEN INTERNATIONAL OFFICIALS CLEARLY AND UNAMBIGUOUSLY AUTHORIZE AND RATIFY VIOLENT ACTIVITIES OF THE STRIKE PARTICIPANTS?

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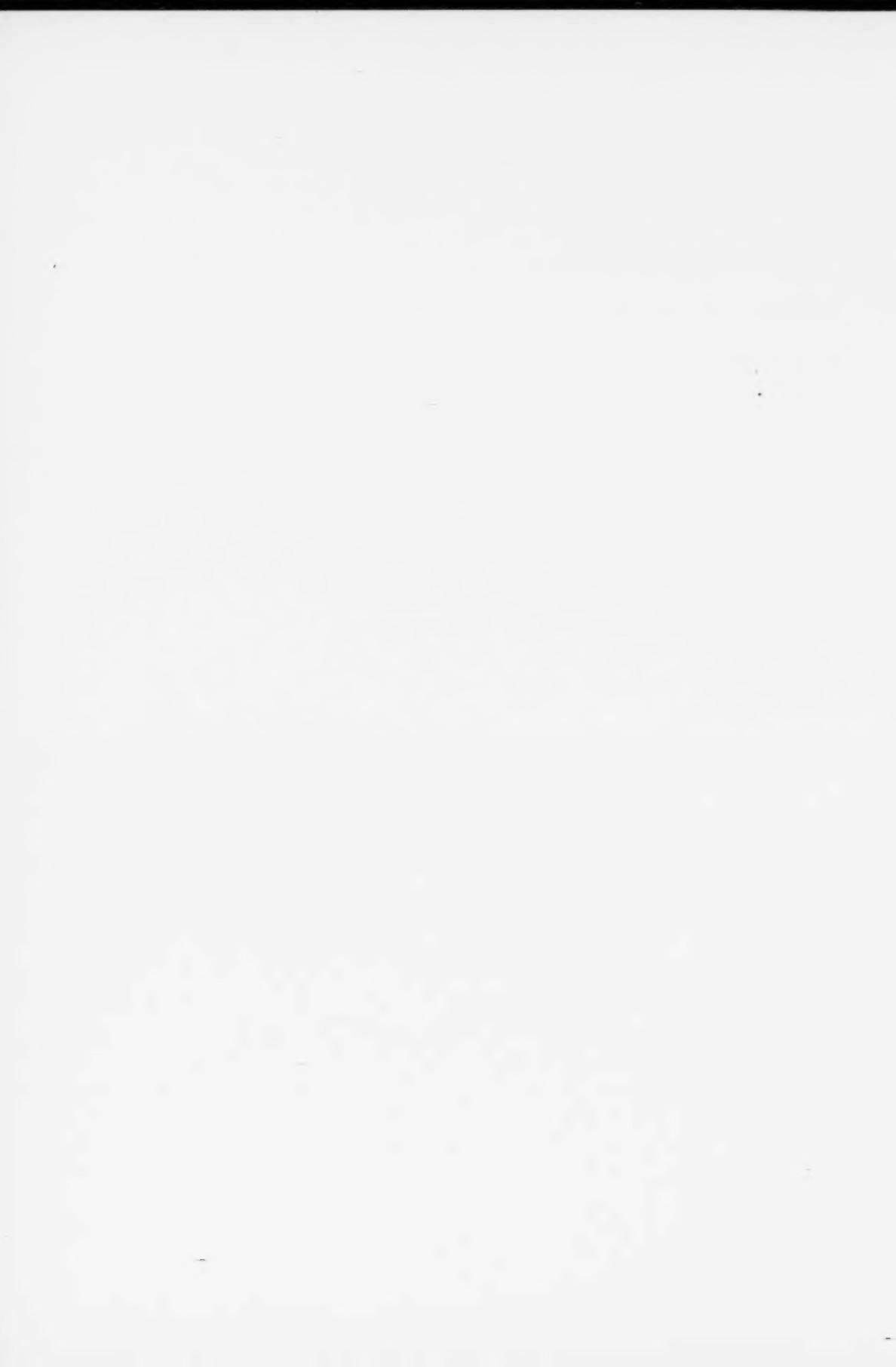


TABLE OF AUTHORITIES

Cases

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REFERENCE TO OPINIONS BY OTHER COURTS

1. Petitioner seeks a Writ of Certiorari to the Final Order of the Supreme Court of Pennsylvania dated May 17, 1990 in which your Petitioner's Application for Reargument was denied. The reargument being sought concerned the opinion of the Supreme Court of Pennsylvania dated January 3, 1990. The judgment of the Supreme Court of Pennsylvania on January 3, 1990 affirmed your Petitioner's judgment against Local 538 and reversed the existing judgment against the International Brotherhood of Teamsters.

The judgment of the Supreme Court of Pennsylvania followed an appeal of the judgment of the Superior Court of Pennsylvania dated October 16, 1986. The Superior Court had affirmed but modified a judgment against Local 538 and the International Brotherhood of

Teamsters entered by the Court of Common Pleas
of Butler County, Pennsylvania.

The official reports of opinions
delivered in this case by the lower courts are
as follows:

Opinion of the Supreme Court:
568 A.2d 151 (Pa. 1990)

Opinion of the Superior Court:
362 Pa. Super. 628, 520 A.2d 67
(1990).

STATEMENT OF GROUNDS ON WHICH JURIS-
DICTION OF THE SUPREME COURT OF THE
THE UNITED STATES IS REVOKED

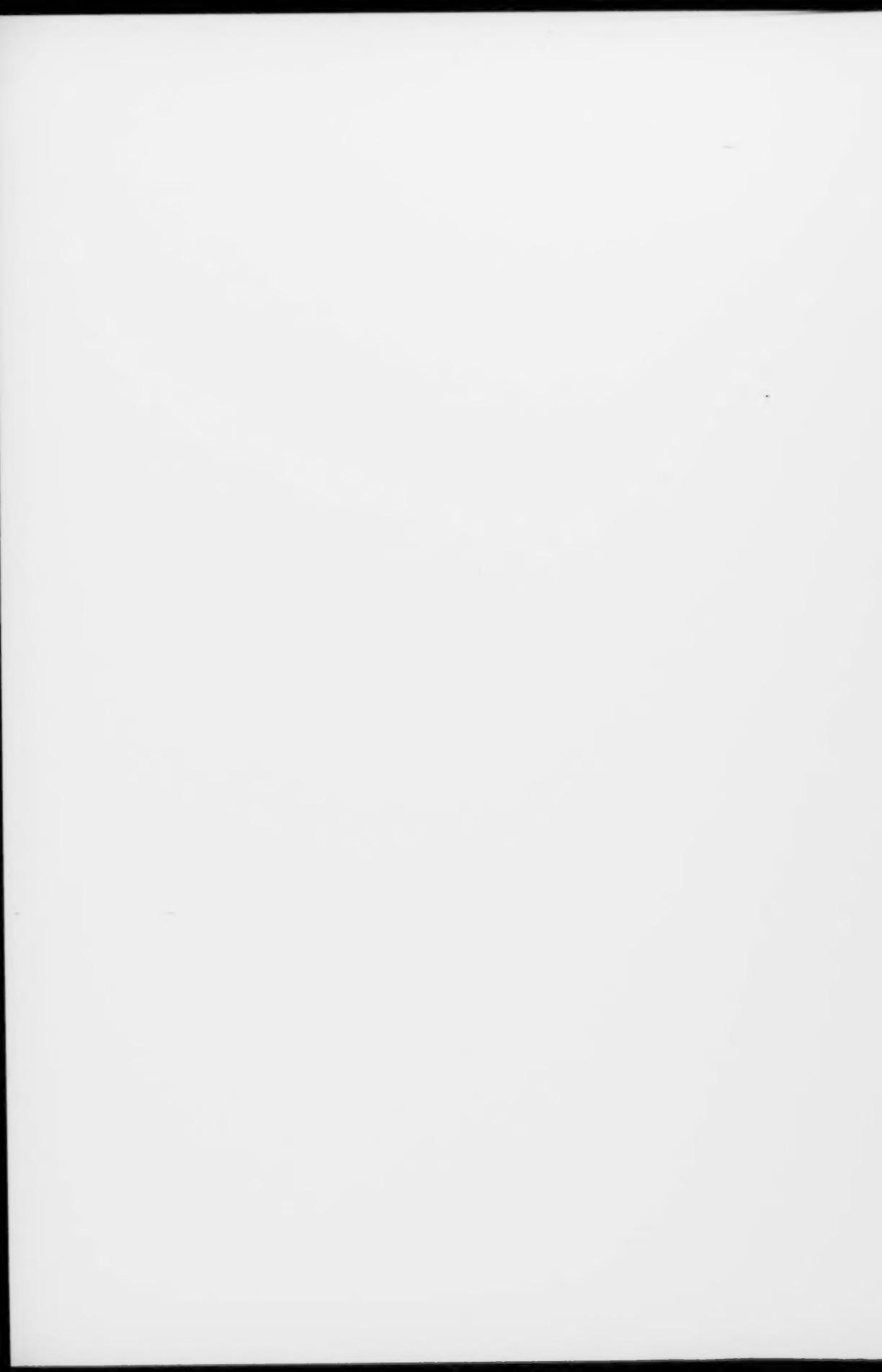
1. The date of the entry of the judgment sought to be reviewed is January 3, 1990.

2. Your Petitioner filed a timely Application for Reargument with the Supreme Court of Pennsylvania and said application was denied by an Order of the Supreme Court of Pennsylvania dated May 17, 1990.



STATUTORY BASIS FOR JURISDICTION OF
THE SUPREME COURT OF THE UNITED
STATES TO REVIEW JUDGMENT OF THE
SUPREME COURT OF PENNSYLVANIA BY
WRIT OF CERTIORARY

1. 28 U.S.C.A. Section 1257(3).



FEDERAL CONSTITUTIONAL PROVISIONS,
TREATIES, STATUTES, ORDINANCES, AND
REGULATIONS INVOLVED IN THE CASE

29 U.S.C.A. Section 106. Responsibility of Officers and Members of Associations or Their Organizations for Unlawful Acts of Individual Officers, Members and Agents.

No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof.



STATEMENT OF THE CASE

A. Background

Petitioner is Freeport Transport, Inc., ("Freeport"), a Pennsylvania Corporation, located in Butler County, Pennsylvania and engaged in the trucking business. Freeport was the Plaintiff in the original action filed in the Court of Common Pleas of Butler County, Pennsylvania. The Defendants in that action were Local Teamsters, Chauffeurs, Warehousemen, Helpers and Garagemen, Union Local No. 538, ("Local 538"), a Union Local representing various employees of Freeport, and the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (the "International") an International Union headquartered in Washington, D.C. The original action was based upon acts of violence committed by Local 538 and the International and their agents during a strike against Freeport that occurred in 1977.

Freeport and Local 538 were parties to a collective bargaining agreement that expired on August 3, 1977. The parties were unable to reach a new agreement prior to the expiration of the existing contract, so, on August 4, 1977, Local 538 began picketing Freeport's main terminal located in Freeport, Pennsylvania. The strike continued until November 19, 1977 when the parties entered into a new collective bargaining agreement. During the course of this strike, the Defendants committed numerous violent acts resulting in substantial damage to Freeport's equipment and property. This law suit is based upon the violence and resultant damage that occurred during the strike period.

This Petition concerns the decision of the Supreme Court of Pennsylvania finding that the International is not liable for violence occurring during this strike. This

decision is based upon Pennsylvania Supreme Court's interpretation of Section 6 of the Norris-LaGuardia Act (29 U.S.C.A. Section 106).

B. Procedural History

Freeport sued Local 538 and the International, seeking compensatory damages for its direct losses during the strike, and punitive damages for the conduct of Local 538 and the International during the strike. The case was tried without the jury before the Honorable George P. Kiester in July of 1984. At trial, Freeport presented evidence concerning the damages incurred during the strike and the connection between the International and the strike related violence. The trial court found in favor of Freeport and against Local 538 and the International, and awarded a judgment for compensatory damages in the amount of \$51,753.82 against both Defendants, and punitive damages against the International in the amount of \$500,000.00. The trial court's

order in favor of Freeport is dated December 27, 1984.

After the trial court denied various post-trial motions, both Local 538 and the International appealed the trial court's decision to the Superior Court of Pennsylvania. The Superior Court affirmed the judgment for compensatory damages entered in favor of Freeport against both the International and Local 538, and modified the judgment for punitive damages against the International, by reducing the award from \$500,000.00 to \$250,000.00.

All three parties appealed the decision of the Superior Court. The International and Local 538 claimed, among other things, that insufficient evidence was presented to establish their participation in, or ratification of, the strike related violence. Freeport appealed the Superior Court's deci-

sion to remit the punitive damages from \$500,000.00 to \$250,000.00.

The Supreme Court of Pennsylvania affirmed the judgment against Local 538 and reversed the judgment against the International.

C. Factual Determinations of the Trial Court.

The trial of the case lasted approximately one week. Freeport presented numerous present and past employees, and others, who witnessed the violent activities. The witnesses included Union members who actually participated in the violence, management personnel who witnessed the violence, and non-striking rank and file employees toward whom much of the violence was directed. The witnesses testified about various discussions they had with Union members and representatives, particularly about discussions they had with International officials.

Based upon the testimony presented at trial, the trial court made numerous findings of fact. These findings are as follows:

1. Plaintiff, Freeport Transport, Inc., a Pennsylvania Corporation, and Teamsters Local Union No. 538, an unincorporated labor organization, were parties to a collective bargaining agreement which expired on August 3, 1977.

2. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America is an unincorporated organization consisting of an unlimited number of Local Unions including Local 538.

3. Prior to the expiration of that agreement, the parties engaged in negotiations for purposes of entering into a new agreement.

4. The parties reached an impasse in their negotiations and on August 4, 1977,

Local 538's membership went on strike in support of its economic demands.

5. The strike ended on November 19, 1977, when the parties entered into a new collective bargaining agreement.

6. There was considerable violence during the course of the strike.

7. There were threats, assaults and substantial damage to Freeport's equipment and property.

8. Damages to Freeport included the destruction of 140 truck tires, 20 windshields and the burning of a GMC tractor.

9. Two non-striking employees of Freeport were assaulted and injured by agents of Local 538 and I.B.T.

10. Union members and agents of Local 538 and I.B.T. threatened company officials and non-striking employees with violence on numerous occasions.

11. Striking union members and agents of Local 538 and I.B.T. used sling shots to hurl marbles, rocks and metal bearings at Freeport's trucks and truck terminal building.

12. Striking union members and agents of Local 538 and I.B.T. damaged Freeport's trucks by smashing windshields, destroying radiators and flattening tires with a sharp object.

13. Sharp objects were placed under Freeport's trucks and trailers to puncture tires. These objects resembled a child's jack with 6-penny nails welded together.

14. Jack-like puncturing objects were fabricated by a striking union member.

15. Harassment and violence was directed towards non-striking employees while on the highways along with damage to Freeport

equipment both on the highways and at the terminal.

16. A striking union member fire-bombed one of Freeport's trucks.

17. While being harassed on the highway, damage was caused to Freeport equipment by gun fire.

18. A shot-gun blast blew out the picture window at the D. Smetanick residence.
(Freeport management)

19. At the Freeport terminal, a picket with a hand gun told D. Smetanick, "I'm going to blow your fucking head off."

20. Other pickets and Jack Robison were present when the aforementioned threat was made.

21. Freeport's trucks were harrassed by vehicles operated by pickets passing and then braking and slowing down in front. Another tactic was for a picket to veer his

vehicle in front of a Freeport truck trying to run the truck off the road.

22. Raymond Baker was Secretary/Treasurer and chief executive officer of Local 538 at the time of the strike.

23. Raymond Baker organized and directed the strike activity and paid the expenses of members on strike duty.

24. Raymond Baker reported to the union membership specific strike related incidents detailing the role each individual or company representative played.

25. When Raymond Baker described how Freeport's driver Morrison was stopped and assaulted, the expression on his face was a "grin" and the "entire membership chuckled."

26. On August 4, 1977, the first day of the strike Raymond Baker was present on the picket line with Jack Robison and several union members.

27. Jack Robison organized and participated in the organization of the strike at Freeport.

28. Mr. Robison was not an employee of Freeport.

29. The first time that Jack Robison was observed by the management of Freeport was at 6:00 a.m., August 4, 1977 when he was seen on the picket line.

30. On the first day of the strike, Mr. Robison harassed a Freeport truck en route to his destination.

31. Mr. Robison threw rocks at Freeport trucks.

32. Mr. Robison harassed Freeport truckers traveling on the public highway.

33. Mr. Robison threatened Freeport drivers via CB radio.

34. After a shotgun like blast at Freeport's terminal and a police pursuit Mr.

Robison threatened to "get" John Weber, a salesman for Freeport.

35. Jack Robison stopped and physically assaulted a non-striking driver of Freeport. At the same time, strikers were smashing the windshield, flattening the tires and putting dirt in the fuel tank of a Freeport truck.

36. Later Jack Robison stated to a victim that it was his job with the teamsters "going around beating up people" and that he "loved it."

37. Jack Robison offered the victim "around \$3,000 if he would not testify against him."

38. Jack Robison then told the victim that he would kill him if he testified.

39. At criminal Docket C.A. #522 of 1977, Butler County, Jack O. Robison was charged with simple assault and criminal mischief. The incident occurred August 20, 1977

at Petrolia. The assault victim was James C. Morriston. Damage to the windshield of a 1974 White tractor-trailer and the flattening of two tires was charged. Mr. Robison pled guilty and was sentenced to make restitution and to undergo imprisonment in the State Correctional Institution at Greensburg for one to two years.

40. As a result of an evidentiary hearing, the court ordered restitution as follows:

James C. Morriston	\$630.00
Lane Service Co.:	

(a) Repairs to tractor	321.00
(b) Medical bills on behalf of Morriston	206.00

Freeport Transport:

(a) Temporary repairs to trailer	363.00
(b) Replacement of 13 damaged tires at \$250 per tire	3,250.00

41. The defendant (Jack O. Robison) paid \$2,100 on account of costs and restitution. On May 3, 1979 the arrearages totalled

\$2,629.20. The same had not been paid as of December 13, 1984.

42. Jack Robison had been an organizer for I.B.T.C.W. & H. of America for a period ending about 1975.

43. At an organizational meeting for Freport's drivers prior to the original contract, Jack Robison was introduced by Raymond Baker as being sent there by the International.

44. The calling card of Jack O. Robison in 1973 was as follows:

[The trial court here reproduced a calling card containing the name of Jack O. Robison Organizer and giving an address of "International Brotherhood of Teamsters, 8550 West Bryn Mawr, Chicago, IL 60631. The calling card also identifies Rolland McMaster as a general organizer and administer of the International.]

45. In the spring of 1973 Jack O. Robison was engaged in an attempt to organize McQuaide Trucking for Teamsters Local 110, at that time there was considerable violence and damage to McQuaide property.

46. In 1974 Jack Robison was attempting to organize Martin Trucking Company for Local 538 and identified himself as representing the International.

47. During the aforementioned organizational drive (Finding of Fact No. 46) an employee of Martin Trucking Company was assaulted by Jack Robison.

48. In 1972 the Teamsters with the help of Raymond Baker together with Rolland McMaster, Jack Robison and a Michael Bohanis (Boano) organizers for I.B.T. were attempting to organize Clinton Fuel and Transport.

49. During this period (FF No. 48) the President of Clinton Fuel and Transport

was assaulted by Jack Robison and as a result, Jack Robison was charged with criminal assault.

50. Eventually the criminal charge against Jack Robison arising from the incident at FF No. 48-49 was dropped in exchange for the Teamsters discontinuing the organizational drive.

51. Jack Robison was a member of Local 538.

52. Acts of strike violence throughout the country by Jack Robison and his affiliation with I.B.T. is known to the F.B.I. and the Office of the U. S. Attorney.

53. No search of I.B.T. files was made by Walter J. Shea, International Vice-President and assistant to the General President of I.B.T. to determine if Jack Robison was an employee or agent of I.B.T. in 1977 as claimed by Freeport.

54. Rolland McMaster has been an employee and union organizer for I.B.T. since 1970.

55. In the early 1970's Rolland McMaster was coordinator and director of the Central Conference of Teamsters engaged in an organizing campaign of steel haulers.

56. Rolland McMaster employed (and trained) Jack Robison as an organizer for I.B.T. through the Teamsters Central Conference until the organizing committee was terminated in 1975.

57. Rolland McMaster at the request of Local 538 participated in a 1977 contract negotiating session with Freeport's representatives and Raymond Baker at Pittsburgh on November 8, 1977.

58. At the meeting on or about November 8, 1977 with Rolland McMaster and Raymond Baker, Rolland McMaster told D. Smetanick, of Freeport, that "if we could

reach agreement for amnesty for Mr. Robison, there would be no further strike or violence."

59. Rolland McMaster indicated to D. Smetanick that "violence and the strike would continue if we couldn't come to some agreement."

60. Rolland McMaster indicated that "he wanted to know why the strike continued and that the purpose of his being there was to make a determination whether the International should continue to fund the strike..."

61. Mr. McMasters had expertise in iron and steel hauling. At the November 8, 1977 meeting he told Freeport that most steel haulers are paid on a percentage method and that he didn't think their contract fit the type of business they were doing.

62. The only evidence of the participation of Mr. McMaster in the 1977 strike

situation was the November 8, 1977 meeting and his earlier association with Jack Robison.

63. Jack Cozza was a general organizer for I.B.T. in 1977.

64. In January, 1978, Mr. Cozza was a trustee for I.B.T. He was also President of Teamster Local 211.

65. Four meetings were held between representatives of Freeport and Mr. Cozza at the offices of Mr. Cozza in Pittsburgh. These meetings were September 9, 15, 20 and October 20.

66. At the first meeting with Mr. Cozza held on September 9, 1977, the discussion included several issues among which was the dropping of charges against Jack Robison and other employees.

67. At the second meeting with Mr. Cozza and Mr. Baker on or about September 15 "They seemed to be more concerned about amnesty

for Jack Robison than about contractual issues."

68. Mr. Cozza had no other concern about other individuals. If Freeport Transport dropped the charges against Mr. Robison, Mr. Cozza could settle and end the strike.

69. The third and fourth meetings with Mr. Cozza which occurred on September 20 and October 20, were limited to trying to negotiate amnesty for Jack Robison. Nothing of substance was discussed although there were a number of unresolved issues at that time.

70. At the third meeting in Mr. Cozza's office, Mr. Cozza informed Local 538 and Freeport that he didn't think that he could be of further help to them in reaching agreement on a contract.

71. Freeport Vice President Daniel Smetanick stated that Mr. Cozza's efforts did not result in a settlement of the strike.

There were several negotiating sessions after the last meeting of October 20, 1977 in Mr. Cozza's office.

72. At a meeting with Mr. Cozza, Attorney Cabot, for Freeport after a private conference with Mr. Cozza, advised the representatives of Freeport that "you know you can settle this thing this evening if you drop the charges."

73. The federal mediator who attended the negotiating sessions in the office of Mr. Cozza, told representatives of Freeport a number of times that the strike could be settled if the charges against Mr. Robison were dropped.

74. Amnesty for Mr. Robison was the subject at a meeting of Daniel Smetanick and others with Raymond Baker and Tom Fagan at the New Kensington Holiday Inn, Tarentum between September 20, and October 20, 1977. Other mem-

bers of the union bargaining unit were not present during those meetings.

75. Tom Fagan may have been associated with the Local and International Teamsters in some capacity according to Daniel Smetanick, but Mr. Baker stated that Mr. Fagan was President of Joint Council 40 and that he was a very influential man in the Pittsburgh area.

76. The evidence that officers, representatives, agents or employees of either Local 538 or I.B.T. who investigated, encouraged or ratified acts of violence is principally by inference.

77. From the facts already stated the Court finds that Raymond Baker as Secretary/Treasurer and executive officer of Local 538 instigated, encouraged and ratified acts of violence by Local 538 members and Jack Robison

against Freeport's non-striking employees, families and property.

78. From the facts already stated the Court finds that I.B.T. instigated, encouraged and ratified acts of violence by Jack Robison and members of Local 538 against Plaintiff's non-striking employees, families and property.

79. From the facts the Court determines that Jack Robison was a principal perpetrator and leader of the acts of violence.

80. Jack Robison was a potential witness friendly to the Defendants and unfriendly to Freeport. The testimony of Jack Robison would have been material and important to the issues before this Court.

81. There was no explanation for the failure of Local 538 and/or I.B.T. to call Jack Robison as a witness.

82. The Court infers from Defendant's failure either to explain the absence

of Jack Robison or to call Jack Robison as a witness that the testimony of Jack Robison would have been unfavorable to the position of both Local 538 and/or I.B.T.

83. The only funds received by Local 538 from I.B.T. during the Freeport strike were out of work benefits to be paid to those Freeport employees on strike and doing picket duty.

84. I.B.T. does not directly control or distribute out of work benefits to those members on strike.

85. The determination as to which Local 538 members would receive benefits was made by Local 538. Benefits were based on whether or not a member was engaged in picketing and had paid his local union dues.

86. Jack Robison was not paid strike benefits by Local 538.

87. Freeport established as damages sustained as a result of unlawful strike activities by Local 538 and I.B.T. the following:

a. The destruction of 140 truck tires.

b. Destruction of 20 truck windshields.

c. Expenses incurred by reason of the assault on Gerald Bayless, \$14,492.00.

d. Property damage to terminal, \$1,056.49.

e. Truck radiators, \$240.00.

f. Fire-bombing of a GMC tractor, \$17,000.00.

g. Freeport proved damages totalling \$33,931.03.

88. The losses actually sustained by Freeport exceeds \$33,931.03. Freeport lacked records and failed to prove the value of the tires destroyed and the cost of replacing some of the windshields. There is

lacking a reasonable basis for the Court to estimate these damages.

89. In 1977 there were 750 Locals affiliated with I.B.T.

90. Local unions had in excess of 70,000 contracts with employers.

91. When a Local of I.B.T. has voted to strike, the I.B.T. pays to the Local "out of work benefits" based on the number of strikers certified by the Local to the I.B.T.

92. In 1983 the payment was at the rate of \$45.00 per week for four weeks for each member on strike; increasing to \$55.00 a week for the fifth week. In 1977 the payments were lower but the number of strikes greater.

93. I.B.T. collects a per capita tax each month from local unions based on the membership of that Local.

94. In 1984, the per capita per member of each local collected by I.B.T. each

month was \$4.15. In 1977 it was a lesser amount.

95. Other sources of I.B.T. income is from properties and stocks.

96. Conferences and joint councils are funded by I.B.T. through the per capita tax.

97. Rolland McMaster stated that I.B.T. had several billions of dollars at its disposal.

D. Presentation of Federal Question

Sought to be Reviewed.

Petitioner is seeking review of the interpretation of Section 6 of the Norris-LaGuardia Act by the Pennsylvania Supreme Court. The issues concerning application of Section 6 of the Norris-LaGuardia Act were raised initially by the International and Local 538 before the trial court. The International moved for summary judgment, claiming that Federal law prevented an International union from being liable for alleged unlawful acts of its affiliated local unions. In its Brief in Support of the Motion for Summary Judgment, the International cited various decisions of the United States Supreme Court holding that an International Union is not liable for strike damages by its local union affiliates. Prior to the decision of the trial judge, the International submitted Proposed Conclusions of Law requesting the

trial court to impose the requirements for the International's liability established by the Supreme Court of the United States in its interpretations of Section 6 of the Norris-LaGuardia Act. Local 538, in its Brief in Support of its Proposed Findings of Fact and Conclusions of Law, urges the application of the Norris-LaGuardia act:

Local 538 submits that this statute [43 Pa. C.S.A. Section 206h] is inapplicable as a result of later Congressional action in the area and the Supreme Court's decision in United Mine Workers of America vs. Gibbs, supra, in that the standard of proof as set forth in Section 6 of the Norris-LaGuardia Act, 1931, 29 U.S.C. Section 106, is the standard to be applied in determining state law tort claims arising from the lawful labor dispute.

In its Brief in Support of Post-Trial Motions, the International raised the application of Section 6 of the Norris-LaGuardia Act in urging application of the

Norris-LaGuardia Act's burden of proof in actions against labor unions.

Before the Pennsylvania Superior Court, the International again argued for the application of the standards of Section 6 of the Norris-LaGuardia Act. The International states in its brief:

The United States Court of Appeals for the Third Circuit and all other Federal Courts that have been confronted with the issue have declared Section 6 of the Norris-LaGuardia Act to be the touchstone upon which a union's liability in a state tort action is to be measured.

Similarly, Local 538 raised the application of Section 6 of the Norris-LaGuardia Act, arguing that the stringent burden of proof set forth in Section 6 should apply to Freeport's cause of action. The Superior Court dismissed the contentions of Local 538 and the International in a footnote to its Opinion:

Finally, I.B.T. argues that the trial court erred in not applying a

'clear and convincing' burden of proof vis a vis the Union's responsibility for its members' acts as required by the Norris-LaGuardia Act. Pennsylvania Law is to the contrary.

Again, on appeal, Local 538 and the International raised the application of Section 6 of the Norris-LaGuardia Act. The Supreme Court of Pennsylvania, in its opinion, discusses the nature of proof required to establish the liability of a labor organization for the acts of its officers, members or agents. It refers to Section 8 of the Pennsylvania Anti-Injunction Act as being substantially similar to the language of Section 6 of the Norris-LaGuardia Act, and then cites the United States Supreme Court's decision in United Brotherhood of Carpenters vs. United States, 330 U.S. 395, 67 Sup. Ct. 775, 91 L.Ed. 973 (1947).

SUMMARY OF ARGUMENT

1. The Petition for Writ of Certiorary should be granted because a state court of last resort, the Pennsylvania Supreme Court, has decided an important question of Federal law in a manner that is inconsistent with the purposes of the Federal law. The Pennsylvania Supreme Court has interpreted Section 6 of the Norris-LaGuardia Act to preclude imposition of liability upon an international union even though representatives of the International clearly and unequivocally authorized and ratified strike-related violence. The effect of the failure of the Pennsylvania Supreme Court to find the International Brotherhood of Teamsters liable for strike damages will be to insulate any international union from liability for strike-related violence in almost all conceivable circumstances.

2. The Petition for Writ of Certiorary should be granted because the Pennsyl-

vania Supreme Court has interpreted Section 6 of the Norris-LaGuardia Act in a way that conflicts with applicable decisions of the United States Supreme Court. The United States Supreme Court has determined that a union does bear certain responsibilities for acts of its officers, members, and agents. United Brotherhood of Carpenters vs. United States, 330 U.S. 395, 67 Sup. Ct. 775, 91 L.Ed. 373 (1947). The decision of the Pennsylvania Supreme Court, if not overruled, would contradict the United Brotherhood of Carpenters' decision and create a situation in which labor unions could almost never be civilly liable for acts of violence.

ARGUMENT

Section 6 of the Norris-LaGuardia Act, 29 U.S.C. Section 106, reads as follows:

No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof.

The trial court made several specific findings of fact concerning the International. It found that Jack Robison, the principal perpetrator of violent activities, was an employee of the International and was introduced by Local 538's secretary as the person being sent there by the International. The Court found that Rolland McMaster, an employee of the International, engaged in negotiations with Freeport representatives and told the Freeport representatives that "if we could

reach agreement on amnesty for Mr. Robison, there would be no further strike or violence." Rolland McMaster indicated to a Freeport representative that "violence and the strike would continue if we couldn't come to some agreement." McMaster indicated that his purpose in being involved was "to make a determination whether the International should continue to fund the strike." Theodore Cozza, a general organizer for the International, attended meetings with Freeport representatives in which he "seemed to be more concerned about amnesty for Jack Robison than about acutal contractual issues." The Court specifically found that if "Freeport Transport dropped the charges against Mr. Robison, Mr. Cozza could settle and end the strike."— Several meetings with Mr. Cozza "were limited to trying to negotiate amnesty for Jack Robison." The Court also specifically found that "I.B.T. instigated, encouraged and

ratified acts of violence by Jack Robison and members of Local 538 against Plaintiff's non-striking employees, families and property. These facts, for purposes of this petition, must be presumed to be correct. It is difficult to determine how much more clear the proof of union activity can be.

It is difficult to imagine a set of circumstances in which the Union's ratification of strike activities can be more clear. Rolland McMaster is an officer of the International. He indicated unambiguously that the International controlled the strike and the funding of the strike and could stop the violence at any time. Continuation of the violence was conditioned upon Freeport giving amnesty to Jack Robison. No matter how one defines "ratification," there can be no question that this is what occurred. The only way the evidence could be clearer is if the International had minutes of a meeting in which it

told Jack Robison to go to Freeport's offices and beat people up.

At least one Circuit Court has recognized that formal authorization of unlawful activity is not necessary to impose liability upon a union. In Yellow Bus Lines, Inc. vs. Local Union 639, 883 F.2d 132 (D.C. Cir.) (1989), the Court noted that a union may ratify or authorize "without going so far as to openly encourage or embrace the tactics of its official representative. Section 6 does not impose a requirement of such formal authorization by the Union." 883 F.2d at 136, citing James R. Snyder Company vs. Edward Rose & Sons, Inc., 546 F.2d 206 (6th Cir. 1976). As noted in Brotherhood of Carpenters vs. United States, the purpose of Section 6 was to nullify the doctrine of respondeat superior so that a union is not held liable simply because a member or official committed acts of vio-

lence. This does not mean that a union should escape responsibility when officers actually exercise authority and control violent activities. In Charles D. Bonanno Linen Service, Inc. vs. McCarthy, 708 F.2d 1 (1st Cir.), cert. denied, 464 U.S. 936 104 Sup. Ct. 346, 78 L.Ed 2d 312 (1983), a union was found liable when the trial court found that a union representative had the power and authority to control strike violence and discipline strike participants yet failed to do so. The record in this case, particularly the testimony of Freeport officials concerning their conversations with Rolland McMaster, supports the trial court's conclusion that the International was aware of the activities of Jack Robison and authorized him to act. If Section 6 of the Norris-LaGuardia Act insulates the International from these types of activities when the evidence presented is so strong, an International union with intelligent legal counsel

will never be found liable in Pennsylvania for strike related violence.

Perhaps the most important case regarding interpretation of Section 6 is the United Brotherhood of Carpenters case. This involved a criminal prosecution of a union for strike related violence. There the Supreme Court stated:

We hold, therefore, that the "authorization" as used in Section 6 means something different from corporate criminal responsibility for the acts of officers and agents in the course or scope of employment. We are of the opinion that the requirement of "authorization" restricts the responsibility or liability in labor disputes of [labor unions] to those associations, organizations or their officers or members who actually participate in the unlawful acts, except upon clear proof that the particular act charged, or acts generally of that type and quality, have been expressly authorized, or necessarily followed from a granted authority, by the association or non participating member sought to be charged or was subsequently ratified by such association, organization, or member after actual knowledge of its occurrence.

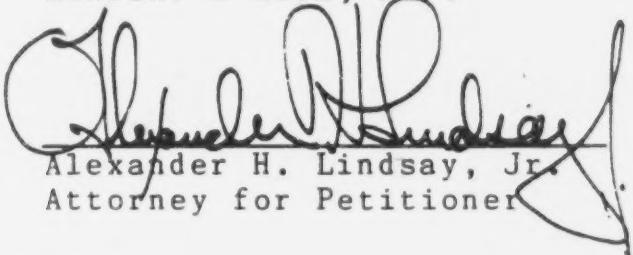
The actions of Rolland McMaster clearly fit within this language. 330 U.S. at 406-7, 67 Sup. Ct. at 781.

The Pennsylvania Supreme Court's application of the standards set forth in Section 6 of the Norris-LaGuardia Act is totally inconsistent with the case law of the United States Supreme Court and othe Federal Courts. The actions of Jack Robison and the statements of Rolland McMaster all found to be true under the trial court's findings of fact, make ratification and authorization by the International an obvious conclusion. The only way that ratification could be more obvious would be if the International prepared minutes directing union thugs to attack trucking terminals. A realistic application of Section 6 of

the Norris-LaGuardia Act requires that the
International pay for its actions.

Respectfully submitted,

LINDSAY & LUTZ, P.C.



Alexander H. Lindsay, Jr.
Attorney for Petitioner

APPENDIX



IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

No. 6 W.D. Appeal Dkt. 1988
No. 7 W.D. Appeal Dkt. 1988
No. 8 W.D. Appeal Dkt. 1988

Appeals from the Order of the Superior Court
of October 16, 1986, at No. 808 Pittsburgh,
1985, Affirming in Part the Judgment of the
Court of Common Pleas of Butler County, Civil
Division, entered on May 24, 1985 at No. A.D.
79-917, Book 116, page 249

FREEPORT TRANSPORT, INC., Appellant at No. 8

vs.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUF-
FEURS, WAREHOUSEMAN AND HELPERS OF AMERICA;
AND LOCAL 538, GENERAL TEAMSTER, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS AFFILIATED WITH THE
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUF-
FEURS, WAREHOUSEMEN, AND HELPERS OF AMERICA,

Appeal of Local 538, General Teamsters, Chauf-
feurs, Warehousemen, and Helpers of America at
No. 6

Appeal of International Brotherhood of Team-
sters, Chauffeurs, Warehousemen and Helpers of
America, an unincorporated association, at
No. 7

JUSTICE ZAPPALA

FILED: January 3, 1990

OPINION

This matter involves cross-appeals filed by Freeport Transport, Inc., (Freeport), the original plaintiff, and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (IBT) and Local 538 of that union, the original defendants, from the Superior Court's per curiam order affirming the judgment for compensatory damages entered in favor of Freeport against both of the defendants and modifying the judgment for punitive damages which was entered only against IBT. IBT and Local 538 challenge the propriety of the award of compensatory and punitive damages; Freeport challenges the remittitur of the punitive damages award by the Superior Court.

The underlying action was brought by Freeport, a Pennsylvania corporation engaged in trucking operations, against IBT and Local 538 to recover damages for the destruction of

its property sustained during a strike by Local 538 in 1977. Freeport and Local 538 were parties to a collective bargaining agreement that terminated on August 3, 1977. Negotiations for a new agreement proved unsuccessful and on August 4, 1977, Local 538 began to picket at Freeport's place of operations. The strike continued through to November 19, 1977, the date on which an agreement was finally reached. During the strike, there were repeated incidents of violence, which resulted in personal injuries to Freeport employees who had continued to work and extensive damage to Freeport's equipment and property.

After the non-jury trial, the court entered a verdict on December 27, 1984 in favor of Freeport and against IBT and Local 538 and awarded compensatory damages in the amount of \$33,931.03 plus interest from November 19, 1977. Punitive damages in the

sum of \$500,000.00 were awarded to Freeport against IBT only. The verdict was subsequently amended to award compensatory damages totalling \$51,753.82; the punitive damages award was not altered.

On appeal, the Superior Court affirmed the judgment against IBT and Local 538 for compensatory damages. The Superior Court accepted IBT's argument that the punitive damages award was excessive, however, and ordered that the judgment be remitted to \$250,000.00. The parties petitioned for allowance of appeal and we granted allocatur to review the matter in light of our recent decision in Gajkowski v. International Brotherhood of Teamsters, 519 Pa. 320, 548 A.2d 533 (1988) (Opinion Announcing the Judgment of the Court).

In Gajkowski, we addressed the issue of the liability of a union for injuries arising out of violence during strikes under Section 8 of Pennsylvania Labor Anti-Injunct-

ion Act, Act of June 2, 1937, P. L. 1198, No. 308, 43 P. S. Section 206h. Section 8 of the Act states the nature of the proof required to establish the liability of a labor organization for the acts of its officers, members, or agents:

No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute as herein defined, shall be held responsible or liable in in any civil action at law or suit in equity or in any criminal prosecution for the unlawful acts of individual officers, members or agents, except upon proof beyond a reasonable doubt in criminal cases, and by the weight of evidence in other cases, and without the aid of -- (a) the doing of such acts by persons who are officers, members or agents of any such association or organization; and (b) actual participation in, or actual authorization of, such acts, or ratification of such act after actual knowledge thereof by such association or organization.

43 P.S. Section 206h (emphasis added). We noted that Section 8 of the Pennsylvania Act is substantially similar to the language of

Section 6 of the Norris-LaGuardia Act, 29 U.S.C. Section 106, which has been interpreted by the U. S. Supreme Court to preclude the use of either a standard agency or respondeat superior analysis to hold a union vicariously liable for the torts of its officers, members, and agents. See, United Brotherhood of Carpenters v. United States, 330 U.S. 395, 67 S. Ct. 775, 91 L.Ed. 973 (1947). In Philadelphia Marine Trade Assocition v. International Longshoreman's Association, 453 Pa. 43, 308 A.2d 98 (1973), we indicted that Section 208h of the Pennsylvania Labor Anti-Injunction Act was intended to have the same purpose as Section 6 of the Norris-LaGuardia Act.

We noted that in United Brotherhood of Carpenters, supra, the United States Supreme Court addressed Section 6 of the Norris-LaGuardia Act stating,

... its [Section 6's] purpose and effect was to relieve organizations ... and members of those organizations from liability for damages or imputation of guilt for lawless acts done in labor disputes by some individual officer or member of the organization, without clear proof that the organization or member charged with responsibility for the offense actually participated, gave prior authorization or ratified such acts after actual knowledge or their perpetration.

330 U.S. at 403, 67 S. Ct. at 779 (emphasis added). The United States Supreme Court held that "authorization" as used in Section 6 signified a concept different from corporate criminal responsibility for the acts of officers and agents within the scope of their employment, concluding that,

We are of the opinion that the requirement of "authorization" restricts the responsibility or liability in labor disputes of employer or employee associations, organizations or their members for unlawful acts of the officers or members of those associations or organizations, although such officers or members are acting within the scope of their general author-

ity as such officers or members who actually participate in the unlawful acts, except upon clear proof that the particular act charged, or acts generally of that type and quality, had been expressly authorized, or necessarily followd from a granted authority by the association or non-participating member sought to be charged or was subsequently ratified by such association, organization or member after actual knowledge of its occurrence.

330 U.S. at 406-407, 67 S. Ct. at 781 (foot-note omitted).

We concluded in Gajkowski, and now reiterate, that, as does Section 6 of the Norris-LaGuardia Act, Section 8 of the Pennsylvania Anti-Injunction Act requires a higher showing that the common law rules of agency to establish a union's liability. Imposing a more stringent standard to establish the liability of a union for damages resulting from unlawful acts committed during a strike advances the policy underlying Section 8 of the Pennsylvania Anti-Injunction Act to protect the unions from the potentially crippling

effect of lawsuits premised on a showing of fault based on mere agency.

No. 6 W.D. Appeal Docket 1988

No. 7 W.D. Appeal Docket 1988

In the instant appeals, both the IBT and Local 538 contend that there was insufficient evidence to establish their liability for the violent and destructive acts which occurred during the strike. (1) To establish the liability of a labor organization for participation under Section 8 of the Anti-Injunction Act, the factfinder must determine

(1) The Superior Court concluded that Local 538 had failed to preserve its issues for appellate review because its motion for post-trial relief did not appear in the official record. It is apparent that the motion for post-trial relief was filed with the trial court and that the trial court considered the issues raised therein. We find that the Superior Court erred in concluding that Local 538 waived the issues raised in its post-trial motion and have considered those issues.

(1) that the acts were committed by officers, members, or agents of the organization and (2) the organization actually participated in, authorized, or ratified such acts after actual knowledge thereof. A finding of participation must be predicated upon clear proof and may be based upon circumstantial evidence. In determining whether a labor organization has actually participated in the commission of an act, the number of persons involved, the status of those persons in the organization, awareness of the acts, and the organization's ability to exercise control over the acts, are all relevant considerations.

Review of the record including the extensive findings of fact made by the trial judge fails to establish the clear proof necessary to support a finding of liability of IBT. The record, however, does support the verdict against Local 538. Therefore, the Superior Court's order affirming the judgment

for compensatory damages against IBT and Local 538 must be reversed in part.

During the trial, the names of our individuals involved in the labor organizations surfaced repeatedly as those identified as being present during the incidents of violence. The four men included Raymond Baker, the Secretary/Treasurer and chief executive officer of Local 538, Charles Peart and Gary Griffith, Freeport employees who were members of Local 538 and Jack Robison, a member of Local 538 who had been an organizer for IBT's Steel, Freight & Special Commodities Division prior to the Freeport strike. The status of Robison's affiliation with the IBT at the time of the strike was strongly contested by the parties during the trial.

The evidence established that the strike activity commenced immediately after the contract expired on August 3, 1977.

Daniel Smetanick, the Vice-President of Freeport, testified that the first person he saw on the picket line at 6:30 a.m. on August 4, 1977 was Jack Robison. On that day, Smetanick attempted to drive a truck to Freeport Brick Company while being followed by members of Local 538 and Robison. The strikers, including Ray Baker, Charles Peart, Gary Griffith and Jack Robison, would use their vehicles to slow down the truck's movement by veering into the truck's path and by passing the vehicle and then slowing the speed of their cars. The following day, Smetanick was harassed by Gary Griffith, who flashed a hand gun from the picket line and threatened to blow Smetanick's head off. Smetanick was then followed while operating his tractor-trailer by Raymond Baker and Peart who attempted to block access to his destination with their vehicle.

Smetanick also testified as to an incident involving members of Local 538,

including Raymond Baker and Jack Robison, which occurred in the evening of September 5, 1977. He indicated that approximately two dozen strikers were blocking the entrance to the Freeport terminal. Once it began to get dark, the strikers began to throwing rocks and several were shooting projectiles from slingshots. Smetanick recognized Baker, Robison, Peart, and Griffith among the strikers. He did not observe Baker with a slingshot, but did see Robison with one. Baker sighted Smetanick and pointed in his direction, but Baker was too far away for Smetanick to hear what he was saying. The incident ended when the police were called. Windows of the terminal had been smashed and equipment was damaged by the projectiles. As a result of that incident, criminal charges were filed against Robison and Griffith, leading to convictions.

Other drivers for Freeport were threatened and harassed by Robison and Local 538 members. The terminal manager, Raymond Condy, testified that strikers threatened to beat him, that marbles or bearings were fired towards him, and that police intervention was necessary to enable him to leave a loading place. The police escorted him to the boundary limits of the town where the load was picked up. When he arrived at his destination, three of the picketers tried to enter the cab of the truck. He locked the doors and radioed for assistance on his CB. While waiting for the sheriff to arrive, he observed picketers placing objects underneath the wheels of the trailer. When it was safe to do so, he examined the area and found approximately 8 to 10 jack-like objects made of six-penny nails welded together. At his request, he was escorted to the county line by the sheriff, only to be met again by picketers. A projec-

tile was fired from a slingshot which resulted in damage to the vehicle. Several tires were flattened due to spikes.

Condy testified that he saw Robison again at the terminal in late August. He went to assist a driver who had been stopped by picketers and feared for his life because of threats by the strikers that if delivery was attempted, they could not be responsible because he had unsafe equipment which might blow up. When Condy arrived, more than one-half of the 15-20 strikers dispersed. Several, including Robison and Griffith, stayed to harass him. After being threatened that he would be beaten and that they were going to put him in a coffin and bury him, he contacted the police who sent a patrol car that remained while the vehicle was unloaded.

After the police left, he observed Robison with a stick which he used to poke at

him. Condyl was gathering hoses and heard something hit the front of the truck. He found that the front windshield had been smashed. After taking a photograph of the damage, he went to the back of the truck, returning to find that Robison's stick was protruding from the radiator. He left the terminal and went back to his pickup truck, discovering that he had four flat tires. The tires had been knifed or ice-picked.

Raymond Condyl's other experiences with Jack Robison were even more unfortunate. Robison had threatened to harm Condyl and his wife during telephone calls to his residence. One evening while Condyl was patrolling a terminal parking lot during the strike, a car drove by on the highway. An exploding device was thrown from the car. A police car driving behind the vehicle gave chase and stopped the vehicle. The driver was Robison. The device that had been thrown was found to be an M-80

firecracker. The shrapnel from the device hit cars, but did not harm Condy. After being released from jail, Robison continued to threaten Condy over the phone.

Throughout the strike, Freeport continually sustained damages to its equipment, including the destruction of 140 truck tires, 20 windshields, and the burning of a GMC tractor. Although the perpetrators of each incident could not always be specifically identified, the testimony established that the nature and method of the destruction were repeated. One witness, Roger Alwine, a Freeport mechanic who was a member of Local 538, testified that during the strike, another picketer told him of a device he had created to puncture tires. He was later shown a sample of the device -- which was the jack-like device used to destroy tires during the strike. Alwine also testified that after the strike

had settled, another Freeport driver who was a Local 538 member admitted to having burned the Freeport truck.

In addition to the property damage occurring during the strike and the threats of violence against company officials, their family members, and non-striking employees, two of Freeport's employees were assaulted. One driver, James Morrison, testified that when he attempted to pick up a load on August 29, 1977, piketers pulled a car in front of the entrance to the plant as he entered the driveway. He recognized Peart and Griffith, but at the time did not know the person who was shouting obscenities at him, who then climbed onto the truck, opened the door, and started to punch him. Morrison learned later that this was Robison. As Morrison grabbed a wrench to hit Robison, Griffith climbed into the truck and pulled the wrench out of his hand. The windshield of the truck was broken,

the tires were flattened, and dirt was put into the fuel tank.

Morrison also testified that he encountered Robison a week later when he went into a bar located across from Freeport's New Eagle terminal. Robison offered to buy him a drink, but the bar was closed. At another bar, Robison apologized for beating him up, assuring him it was not personal. Robison indicated that it was his job and that he was just doing his job. Subsequently, Robison was charged with simple assault and criminal mischief in connection with the Morrison incident. He pled guilty and was sentenced to a term of imprisonment of one to two years and ordered to make restitution.

Roger Alwine testified that at one of the union meetings held during the strike, the Morrison incident was addressed by Raymond Baker. Alwine indicated that Baker wanted to

make the membership aware of the circumstances surrounding the incident. Baker outlined the facts that the driver had been stopped in an attempt to intervene in the delivery and that he had been physically abused. Alwine described the expression on Baker's face at the time as a "grin" and that the membership chuckled in response to his report.

Gerald Bayless, another non-union Freeport driver who worked during the strike, testified that he was injured on October 17, 1977 while traveling to pick up a load of bricks. Bayless was followed by picketers. While driving, he was hit on the head by a projectile which had crashed through the windshield. As a result of the incident, he was hospitalized for a month. He testified that the cheekbone on his right side was Teflon, that his eye sockets were set on Teflon, and that there were perforations in his eyeballs.

He was not able to identify who threw the projectile.

Based upon the evidence recited, the trial judge found that the IBT and Raymond Baker, as the Secretary/Treasurer and Executive officer of Local 538, instigated, encouraged, and ratified acts of violence by the members of Local 538 and Robison. He also concluded that the evidence established that the destruction of property and incidents of personal violence began at the inception of the strike and continued throughout the length of the strike. The trial court also concluded that Raymond Baker, an officer of Local 538, and other Local 538 members actively participated in the vandalism and violence. Despite the repeated incidents of violence, Local 538 made no attempts to discourage such conduct, but in fact, encouraged it. While the actions of the various individuals as cited above were

abhorrent, the record fails to disclose any evidence connecting IBT to the individual incidents of violence. With regard to IBT, the actual knowledge and assent under Section 206h of the Pennsylvania Act is simply lacking. While certainly circumstantial evidence can be used to establish participation and ratification, that circumstantial evidence must establish clear proof of the facts being offered. This record does not provide such clear proof in the case of IBT.

The trial court's findings of fact provide a concise summary of the evidence which was accepted. Reviewing this evidence it is clear that the appellee simply did not establish that IBT actively participated in or ratified the actions of Robison or other individual participants. A recitation of those findings of fact by the trial court is set forth as follows:

45. In the spring of 1973 Jack O. Robison was engaged in an attempt to organize McQuaide Trucking for Teamsters Local 110, at that time there was considerable violence and damage to McQuaide property. (T. 285-291)

46. In 1974 Jack Robison was attempting to organize Martin Trucking Company for Local 538 and identified himself as representing the International. (T. 256-258)

47. During the aforementioned organizational drive (Finding of Fact No. 46) an employee of Martin Trucking Company was assaulted by Jack Robison. (T. 259-60)

48. In 1972 the Teamsters with the help of Raymond Baker together with Rolland McMaster, Jack Robison and a Michael Bohanis (Boano) organizers for I.B.T. were attempting to organize Clinton Fuel and Transport. (T. 448-453, 747-8-9)

49. During this period (FF No. 48) the President of Clinton Fuel and Transport

was assaulted by Jack Robison and as a result, Jack Robison was charged with criminal assault. (T. 451)

50. Eventually the criminal charge against Jack Robison arising from the incident at FF No. 48-49 was dropped in exchange for the Teamsters discontinuing the organizational drive. (T. 448-465)

51. Jack Robison was a member of Local 538. (T. 809)

52. Acts of strike violence throughout the country by Jack Robison and his affiliation with I.B.T. is known to the F.B.I. and the Office of the U. S. Attorney. (T.139-143)

53. No search of I.B.T. files was made by Walter J. Shea, International Vice-President and assistant to the General President of I.B.T. to determine if Jack Robison was an employee or agent of I.B.T. in 1977 as claimed by Freeport. (T. 674, 715, 728)

54. Rolland McMaster has been an employee and union organizer for I.B.T. since 1970. (T.729)

55. In the early 1970's Rolland McMaster was coordinator and director of the Central Conference of Teamsters engaged in an organizing campaign of steel haulers. (T. 729-743)

56. Rolland McMaster employed (and trained) Jack Robison as an organizer for I.B.T. through the Teamsters Central Conference until the organizing committee was terminated in 1975. (T. 731-732, 744-5-6-7)

57. Rolland McMaster at the request of Local 538 participated in a 1977 contract negotiating session with Freeport's representatives and Raymond Baker at Pittsburgh on November 8, 1977. (T. 734-740, 834)

58. At the meeting on or about November 8, 1977 with Rolland McMaster and Raymond Baker, Rolland McMaster told D.

Smetanick, of Freeport, that "if we could reach agreement for amnesty for Mr. Robison, there would be no further strike or violence." (T. 42-44)

59. Rolland McMaster indicated to D. Smetanick that "violence and the strike would continue if we couldn't come to some agreement." (T. 43)

60. Rolland McMaster indicated that "he wanted to know why the strike continued and that the purpose of his being there was to make a determination whether the International should continue to fund the strike..." (T. 43)

61. Mr. McMasters had expertise in iron and steel hauling. At the November 8, 1977 meeting he told Freeport that most steel haulers are paid on a percentage method and that he didn't think their contract fit the type of business they were doing. (T. 735, 834)

62. The only evidence of the participation of Mr. McMaster in the 1977 strike situation was the November 8, 1977 meeting and his earlier association with Jack Robison. (T. 133-6)

63. Jack Cozza was a general organizer for I.B.T. in 1977. (T. 755-756)

64. In January, 1978, Mr. Cozza was a trustee for I.B.T. He was also President of Teamster Local 211. (T. 755)

65. Four meetings were held between representatives of Freeport and Mr. Cozza at the offices of Mr. Cozza in Pittsburgh. These meetings were September 9, 15, 20 and October 20. (T. 758, 763, 765, 766, 35, 884-886)

66. At the first meeting with Mr. Cozza held on September 9, 1977, the discussion included several issues among which was the dropping of charges against Jack Robison and other employees. (T. 36, I.B.T. Exh. 3, 892, 885-892, 900-906)

67. At the second meeting with Mr. Cozza and Mr. Baker on or about September 15 "They seemed to be more concerned about amnesty for Jack Robison than about contractual issues." (T. 37)

68. Mr. Cozza had no other concern about other individuals. If Freeport Transport dropped the charges against Mr. Robison, Mr. Cozza could settle and end the strike. (T. 38-39, 900, 903-4)

69. The third and fourth meetings with Mr. Cozza which occurred on September 20 and October 20, were limited to trying to negotiate amnesty for Jack Robison. Nothing of substance was discussed although there were a number of unresolved issues at that time. (T. 39-40, 894-5-6-7) I.B.T. Exh. 2)

70. At the third meeting in Mr. Cozza's office, Mr. Cozza informed Local 538 and Freeport that he didn't think that he

could be of further help to them in reaching agreement on a contract. (T. 768)

71. Freeport Vice President Daniel Smetanick stated that Mr. Cozza's efforts did not result in a settlement of the strike. There were several negotiating sessions after the last meeting of October 20, 1977 in Mr. Cozza's office. (T. 119)

72. At a meeting with Mr. Cozza, Attorney Cabot, for Freeport after a private conference with Mr. Cozza, advised the representatives of Freeport that "you know you can settle this thing this evening if you drop the charges." (T. 903-4)

73. The federal mediator who attended the negotiating sessions in the office of Mr. Cozza, told representatives of Freeport a number of times that the strike could be settled if the charges against Mr. Robison were dropped. (T. 900-906)

74. Amnesty for Mr. Robison was the subject at a meeting of Daniel Smetanick and others with Raymond Baker and Tom Fagan at the New Kensington Holiday Inn, Tarentum between September 20, and October 20, 1977. Other members of the union bargaining unit were not present during those meetings. (T. 40, 108-113, 383-387)

We find that the trial judge's findings of fact are supported by the record. However, as a matter of law, these findings do not provide the quantum of evidence necessary to establish actual participation on the part of IBT. The appearance of a representative of the International in an efford to end a strike does not mean that the IBT approved or encouraged the violence during the strike. The representative was not speaking for the International when he conveyed the demands of the local to consider amensty, indeed this was

the issue before the participation in the settlement meetings. For could the International be responsible for failure to settle or for the threat of continued violence, unless the International authorized the representative to speak for them? The higher standard required under Section 8 to establish liability in this case has not been met by the circumstantial evidence introduced at trial.

Accordingly, the Superior Court's order affirming the judgment for compensatory damage against Local 538 is affirmed and the judgment against IBT is reversed. (2)

Former Justice Stout did not participate in the decision of this case.

Mr. Justice Papadakos files a Concurring Opinion in which Mr. Justice Larsen joins.

Mr. Justice Flaherty files a Concurring and Dissenting Opinion.

(2) Having determined that the liability verdict against IBT cannot stand, it is unnecessary to address Freeport's challenge to Superior Court's order remitting the judgment of punitive damages.

IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

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1985, Affirming in Part the Judgment of the
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79-917, Book 116, page 249

FREEPORT TRANSPORT, INC., Appellant at No. 8

vs.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUF-
FEURS, WAREHOUSEMAN AND HELPERS OF AMERICA;
AND LOCAL 538, GENERAL TEAMSTER, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS AFFILIATED WITH THE
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Appeal of Local 538, General Teamsters, Chauf-
feurs, Warehousemen, and Helpers of America at
No. 6

Appeal of International Brotherhood of Team-
sters, Chauffeurs, Warehousemen and Helpers of
America, an unincorporated association, at
No. 7

MR. JUSTICE PAPADAKOS Filed: January 3, 1990

CONCURRING OPINION

I agree with the decision reached by the Majority with respect to the International Brotherhood of Teamsters. I concur in the affirmance of the judgment against Local 538 only because I believe that there is sufficient evidence in this record to justify the conclusion that Local 538 ratified de facto the acts of violence committed herein. The evidence does not support the use of any other theory to justify imposing liability on the Local consistent with my Opinion Announcing the Judgment of the Court in Gajkowski v. International Brotherhood of Teamsters, 519 Pa. 320, 548, A.2d 533 (1988).

MR. JUSTICE LARSEN joins this Concurring Opinion.

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WESTERN DISTRICT

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Appeal of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, an unincorporated association, at No. 7

MR. JUSTICE FLAHERTY Filed: January 3, 1990

CONCURRING AND DISSENTING OPINION

I join with the majority in holding tha Local 538 is liable for damages caused to Freeport Transport, Inc., but dissent with respect to the majority's holding that there is no liability on behalf of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (International).

The majority states that a "higher standard" of proof is required to establish a union's liability for the unlawful acts of its personnel than would be applicable under common law rules of agency. Whether the standard of proof would best be characterized as "higher," or merely as "unique", is open to question. Under the Pennsylvania Labor Anti-Injunction Act, proof "by the weight of evidence" is all that is required. 43 P.S. Section 206h. This proof must be accomplished, however, "without the aid of any presumptions

of law or fact." id. And the proof must establish both of the following elements: "(a) the doing of such acts by persons who are officers, members, or agents of any such association or organization; and (b) actual participation in, or actual authorization of, such acts, or ratification of such acts after actual knowledge thereof by such association or organization." id.

Applying this standard to the facts of the present case, the weight of the evidence quite sufficiently supports the finding that the International authorized or ratified the unlawful actions of its union organizer, Jack Robison. The egregious actions of Robison were detailed at length in the majority opinion, and, as the trial court found, the evidence established that Robison was an agent of the International and that his

actions were authorized and ratified by the International.

As stated by former Mr. Justice Hutchinson, in Gajkowski v. International Brotherhood of Teamsters, 515 Pa. 516, 530, 530 A.2d 853 (1987), withdrawn, 519 Pa. 320, 548 A.2d 533 (1988), with regard to holding local unions liable for the unlawful acts of their members:

Our legislature did not intend Section 8 of the Pennsylvania Labor Anti-Injunction Act to contenance total abdication of union responsibility for deadly violence in tense labor situations. There is a time when those who have accepted responsibility from their fellow workers for advancing the collective good cannot look the other way while irresponsible men openly foment violence which injures people and hauls the labor movement into disrepute.

Union responsibility of course extends beyond the local level to encompass higher level union management, in this case, the International. The International's strong efforts to negotiate amnesty specifically for

Robison were, as they should be, regarded as evidence of ratification of his unlawful acts, sufficient to support a finding of liability for the International pursuant to 43 P.S. Section 206h, supra. The International knew of Robison's unlawful acts, did nothing to stop them, and then made repeated efforts to negotiate amnesty for him. Indeed, the International expressly represented that strike-related acts of violence would come to an end if amnesty were provided for Robison. Seeking amnesty under these circumstances and in the fashion it did is clear evidence which supports the trial court's finding of ratification on the part of the International.

In all other respects, I join the majority opinion.

IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

No. 6 W.D. Appeal Dkt. 1988
No. 7 W.D. Appeal Dkt. 1988
No. 8 W.D. Appeal Dkt. 1988

Appeals from the Order of the Superior Court
of October 16, 1986, at No. 808 Pittsburgh,
1985, Affirming in Part the Judgment of the
Court of Common Pleas of Butler County, Civil
Division, entered on May 24, 1985 at No. A.D.
79-917, Book 116, page 249

FREEPORT TRANSPORT, INC., Appellant at No. 8

vs.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUF-
FEURS, WAREHOUSEMAN AND HELPERS OF AMERICA;
AND LOCAL 538, GENERAL TEAMSTER, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS AFFILIATED WITH THE
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUF-
FEURS, WAREHOUSEMEN, AND HELPERS OF AMERICA,

Appeal of Local 538, General Teamsters, Chauf-
feurs, Warehousemen, and Helpers of America at
No. 6

Appeal of International Brotherhood of Team-
sters, Chauffeurs, Warehousemen and Helpers of
America, an unincorporated association, at
No. 7

ARGUED: October 24, 1988

JUDGMENT

ON CONSIDERATION WHEREOF, it is now
here ordered and adjudged by this Court that
the judgment of the SUPERIOR COURT OF PENNSYL-
VANIA, be and the same is, hereby AFFIRMED AS
TO COMPENSATORY DAMAGE AGAINST LOCAL 538, AND
JUDGMENT AGAINST IBT IS REVERSED.

/s/ Irma T. Gardner

Irma T. Gardner
Deputy Prothonotary

DATED: January 3, 1990

"ORDER

PER CURIAM

DATED: MAY 17, 1990

The Application for Reargument is
denied."

Accordingly, the Original Record is
being returned to the Court of Common Pleas of
Butler County, Civil Division, today, May 18,
1990.

/s/ Irma T. Gardner
Deputy Prothonotary

IN THE SUPERIOR COURT OF PENNSYLVANIA

FREEPORT TRANSPORT,) PGH OFFICE
INC.,)
vs.) No. 00808
-) Pittsburgh,
INTERNATIONAL) 1985
BROTHERHOOD OF TEAM-)
STERS, CHAUFFEURS,)
WAREHOUSEMEN and)
HELPERS OF AMERICA;)
AND LOCAL 538,)
GENERAL TEAMSTERS,)
CHAUFFEURS,)
WAREHOUSEMEN AND)
HELPERS, AFFILIATED)
WITH INTERNATIONAL)
BROTHERHOOD OF TEAM-)
STERS, CHAUFFEURS,)
WAREHOUSEMEN AND)
HELPERS OF AMERICA,)
Appellants)

Appeal from the Judgment of the Court of
Common Pleas, Butler County, Civil
Division, at No. A.D.79-917,
Book 116, Page 249

BEFORE: BROSKY, MONTGOMERY AND HESTER, JJ.

MEMORANDUM:

This is an appeal from judgment entered
against the International Brotherhood of
Teamsters, Chauffeurs, Warehousemen, and
Helpers of America (hereafter "IBT"), and

Local 538 of that union in the amount of \$33,931.03 compensatory, \$17,822.79 delay damages, and \$500,000.00 punitive damages. Although the compensatory damages (\$51,753.82) were assessed against both defendants, only IBT was held liable to pay the punitive damages. After carefully reviewing the record we agree with appellant IBT that the amount of punitive damages is excessive and order the judgment for punitive damages remitted to \$250,000.00. We find no merit in appellant's other contentions and, accordingly, affirm the judgment in all other aspects.

Freeport and Local 538 were parties to a collective bargaining agreement which expired on August 3, 1977. No new agreement was reached before that date, and on August 4, 1977 Local 538 began picketing Freeport's place of business. During the strike, which lasted until November 19, 1977, there were violent incidents which resulted in damage to

appellee's equipment and property. That damage was the basis of appellee's suit.

Appellant IBT raises five issues in this appeal, only two of which merit extended treatment. The first such issue is whether

IBT contends that Local 538 is not its agent and that, therefore, it should not be liable for 538's actions. While this may be so, it misses the point. IBT's liability was based on the actions of its agent, Jack Robinson, not on the actions of Local 538 personnel. The same response applies to IBT's contention that the payment of strike benefits does not constitute ratification. Finally, IBT argues that the trial court erred in not applying a "clear and convincing" burden of proof vis-a-vis the union's responsibility or its members acts, as required by the Norris-LaGuardia Act. Pennsylvania law is to the contrary. *Fife v. Great Atlantic & Pacific Tea Co.*, 356 Pa. 265, 268, 52 A.2d 24, 34 (1947) held that a union was not liable for acts unless it can be shown, by a preponderance of the evidence, that the acts were done by officers, agents or members, and that the union participated, authorized or ratified such acts. (Emphasis added). The same standard, in different words, is given in *Lazar v. Rur-Industries, Inc.* 337 Pa. Super. 445, 450, 487 A.2d 29, 31 (1985) (emphasis added): "[B]efore a plaintiff may recover from a union in a strike-related complaint, he must be able to show, by the weight of the evidence, that the acts complained of were ordered, authorized or ratified by the union."

the trial court properly interpreted the Pennsylvania Labor Anti-Injunction Act, 43 Pa. C.S. Section 206(h), which requires that the plaintiff prove a labor organization's liability for strike damages "without the aid of any presumptions of law or fact." Appellant's argument misses the distinction between presumptions and inferences. The opinion of the trial court correctly disposed of this issue as follows:

A presumption is a rule of law such as a presumption of care, presumption of innocence, a presumption of death, a presumption of undue influence, or a presumption of a gift. It is a mandatory deduction which the law expressly directs to be made. In absence of evidence to the contrary a presumption is conclusive. On the other hand an inference is a permissive deduction. It is something that may be deduced from other facts. As stated by the Superior Court 'Inference is a process of reasoning by which a fact or proposition sought to be established (here the prisoner's knowledge of the presence of the hold in the automobile) is deduced as a logical consequence from other

facts, or a state of facts, already proved or admitted. . . ' Commonwealth v. Whitman, 199 Pa. Super. 631, 634 (1962).

Thus, it was proper for the trial court, as factfinder, to make inferences supported by the record. Appellant would have us erect an impervious barrier for plaintiffs in cases such as the one sub judice.

The other contention of IBT to be treated here is whether the punitive damages were supported by the evidence. "It is well settled law in Pennsylvania that the decision of whether to award punitive damages and the amount to be awarded are within the discretion of the fact finder." Delahanty v. First Pennsylvania bank, 318 Pa. Super. 90, 129, 464 A.2d 1243, 1263 (1983). That discretion is not abused if the evidence would allow the conclusion that the actions of the defendant were willful, wanton, reckless or oppressive. Id. The record would allow such conclusions

by the fact finder. This was shown by the trial court's Findings of Facts 10 through 14, 19 and 25, and 30 through 38, which described specific instances of violent acts that were perpetrated by persons of either IBT or Local 538. Thus, we find adequate support for the trial court's awarding punitive damages.

However, we agree with appellant that the punitive damages are excessive in the instant case. An award of punitive damages must bear a reasonable relationship to the amount of compensatory damages awarded. Kirkbride v. Lisbon Contractors, Inc., ___ Pa. Super. ___, ___ A.2d ___ (No. 02475 Philadelphia, 1983, filed ___/___/86); Hughes v. Babcock, 349 Pa. 475, 37 A.2d 551 (1944).

When considering whether an award of punitive damages is excessive, we must keep in mind that:

any mathematical ratio as to damages should be based on the seriousness of the defendant's misconduct and

should consider the wealth of the defendant so that a suitable punishment can be imposed.

Delahanty, supra. Appellant, IBT, contends that the instant award of punitive damages, which is almost ten times the amount of compensatory damages in this case, is inappropriate. Although this court has upheld an award of punitive damages which was eleven times greater than compensatory damages, that was in a case where the defendant was a large financial institution with an apparent astronomical net worth. Id.

Although there was evidence presented in the instant case that IBT has substantial assets at its disposal, we believe that the trial court abused its discretion in awarding excessive punitive damages. After a careful review of the record, we find that the punitive damages against the labor union should be no more than \$250,000.00, which is about eight times the amount of compensatory

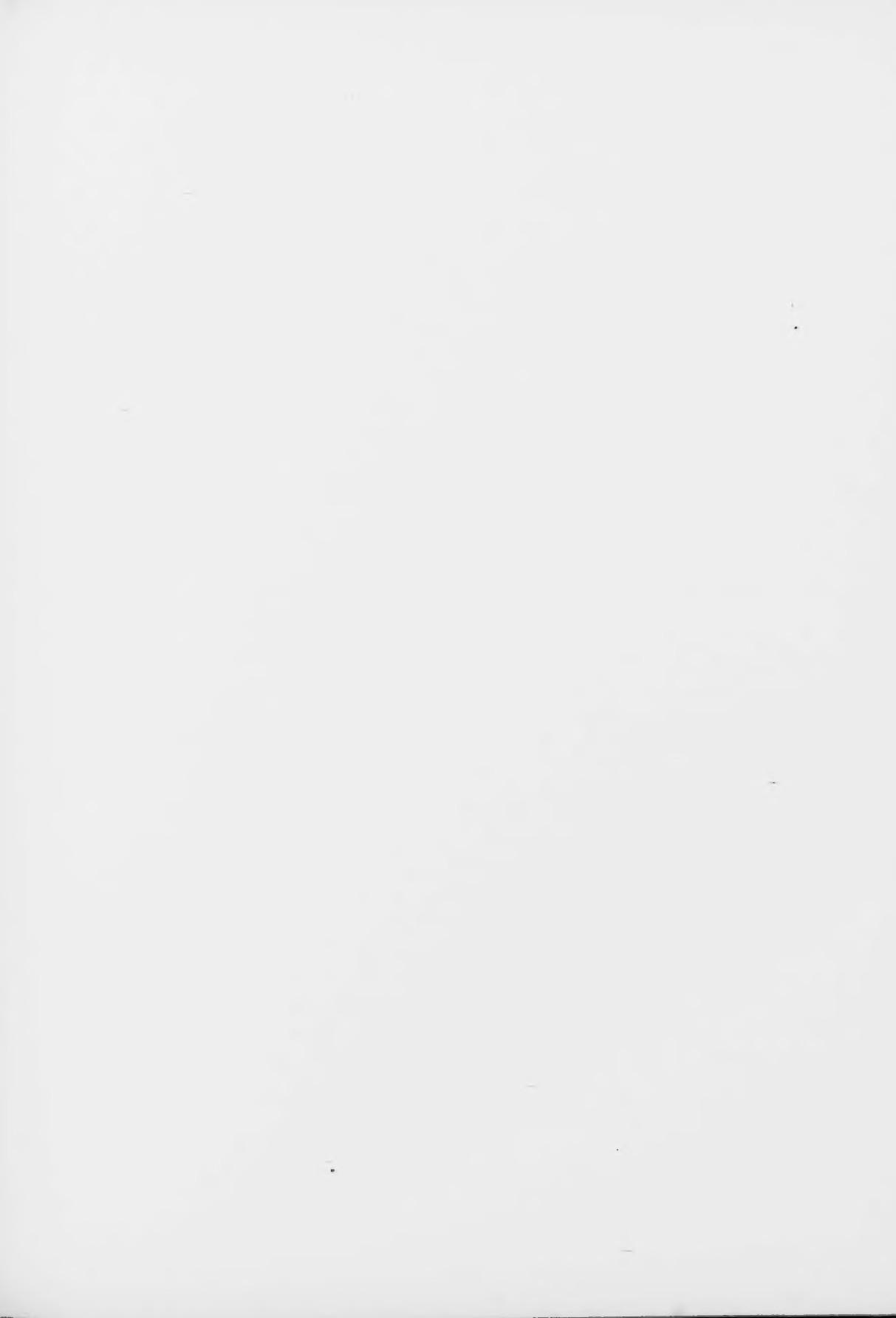
damages awarded excluding the delay damages. We find that this figure more accurately reflects the seriousness of the misconduct and gives due consideration to a reasonable relationship between compensatory and punitive damages.

Finally, we must note that appellant Local 538, has attempted to raise two issues for our review. Neither of these issues have been preserved for appellate review. The official record does not contain any post verdict motions by Local 538. Failure to file post verdict motions constitutes a waiver. Benson v. Penn Central Transportation Company, 463 Pa. 37, 41, 342 A.2d 393, 395 (1975).

The first is whether the trial court properly used the "weight of the evidence" standard in its review of the evidence. Second, Local 538 wishes us to find that they cannot be held liable as a matter of law.

Judgment for compensatory damages in the amount of \$51,753.82 affirmed. Judgment for punitive damages remitted to \$250,000.00 and affirmed as so modified.

HESTER, J. files a Concurring and.
Dissenting Memorandum.



IN THE SUPERIOR COURT OF PENNSYLVANIA

FREEPORT TRANSPORT,)	PGH OFFICE
INC.,)	
)	
vs.)	No. 00808
)	Pittsburgh,
INTERNATIONAL)	1985
BROTHERHOOD OF TEAM-)	
STERS, CHAUFFEURS,)	
WAREHOUSEMEN and)	
HELPERS OF AMERICA;)	
AND LOCAL 538,)	
GENERAL TEAMSTERS,)	
CHAUFFEURS,)	
WAREHOUSEMEN AND)	
HELPERS, AFFILIATED)	
WITH INTERNATIONAL)	
BROTHERHOOD OF TEAM-)	
STERS, CHAUFFEURS,)	
WAREHOUSEMEN AND)	
HELPERS OF AMERICA,)	
)	
Appellants)	

Appeal from the Judgment Entered May 24,
1985, in the Court of Common Pleas of
Butler County, Civil Division, at
No. A.D. No 79-917, Book 116 Page 249

BEFORE: BROSKY, MONTGOMERY AND HESTER, JJ.

CONCURRING AND DISSENTING
MEMORANDUM BY HESTER, J.:

I join in that portion of the majority
opinion which affirms the decision of the
trial court, for I believe that Judge Brosky

has thoughtfully and correctly addressed the arguments pertaining to the Pennsylvania Labor Anti-Injunction Act and the evidence supporting punitive damages. I must, however, dissent from the portion of the majority's analysis which reduces the punitive damage award against IBT from \$500,000 to \$250,000.

Although the award is large, I believe it is justified by the egregious conduct of the international union's agents and by the need to deter such conduct. The trial court determined that striking union members and agents of Local 538 and IBT used sling shots to hurl marbles, rocks and metal bearings at Freeport trucks and truck terminal building. They also smashed truck windshields, destroyed radiators and flattened tires. Non-striking employees were harassed on the highways, run off the road and fired upon. Two non-striking employees were assaulted and injured. company

officials and non-striking employees were threatened on numerous occasions, and in one instance Freeport executive's picture window in his home was blown out by a shotgun blast.

In many instances Jack Robison, IBT's agent upon whose actions their liability was based, organized and participated in the violent strike activities. He threw rocks at Freeport trucks and harassed truckers on the public highway, sometimes using a CB radio. Robison threatened a Freeport salesman and assaulted a non-striking Freeport driver. Robison offered his victim three thousand dollars not to testify against him and then threatened to kill him if he did testify. Robison was convicted of simple assault and criminal mischief. Moreover, during the strike negotiations, several IBT representatives met with Freeport representatives to discuss dropping all charges against Robison in exchange for a strike settlement. Clearly,

the seriousness of IBT's misconduct and the purpose of punitive damages -- to punish the wrongdoer and to deter both him and others from engaging in similar conduct in the future, Delahanty v. First Pennsylvania Bank, supra at 129, 464 A.2d at 1263--support the trial court's punitive damage award of \$500,000.

"It is well settled law in Pennsylvania that the decision of whether to award punitive damages and the amount to be awarded are within the discretion of the fact finder." Id. Furthermore, punitive damages "will only be reduced on appeal if the reviewing court determines that they are excessive under the facts of the individual case," Id., which is "when they are so large as to indicate that the fact finder was influenced by passion or prejudice, when they do not bear a reasonable relation to the injury or they are

disproportionate to compensatory damages awarded." *Id.* at 133, 464 A.2d at 1265.

Although the amount of punitive damages must bear a reasonable relationship to the award of compensatory damages and the trial court must have considered the seriousness of the defendant's misconduct along with his wealth to impose the proper punishment, a fixed ratio between compensatory and punitive damages does not exist. *Id.*

I believe the remittitur ordered by the majority amounts to a substitution of our judgment for that of the trial court, rather than a reasoned conclusion that it was disproportionate or influenced by passion or prejudice. The majority opinion fails to explain precisely why it is reasonable to award punitive damages five times greater than the compensatory damages yet it is unreasonable to award punitive damages ten times greater.

This court has upheld a punitive damages award eleven times greater than the compensatory damages when the defendant was a large and wealthy financial institution. delahanty, supra. The trial court determined that IBT has substantial assets at its disposal and that finding is supported by the record.

There is nothing in the record to indicate that the trial court was motivated by passion or prejudice in determining the punitive damage award. I would defer to the discretion of the trial court and hold that the \$500,000 award bears a reasonable relation to the injuries sustained as the result of appellant's outrageous conduct, and further, that it is not disproportionate to the

compensatory damages. I do not believe the award should be reduced by this court and would therefore affirm the trial court in all respects.



IN THE SUPERIOR COURT OF PENNSYLVANIA

FREEPORT TRANSPORT,)	PGH OFFICE
INC.,)	
)	
vs.)	No. 00808
)	Pittsburgh,
INTERNATIONAL)	1985
BROTHERHOOD OF TEAM-)	
STERS, CHAUFFEURS,)	
WAREHOUSEMEN and)	
HELPERS OF AMERICA;)	
AND LOCAL 538,)	
GENERAL TEAMSTERS,)	
CHAUFFEURS,)	
WAREHOUSEMEN AND)	
HELPERS, AFFILIATED)	
WITH INTERNATIONAL)	
BROTHERHOOD OF TEAM-)	
STERS, CHAUFFEURS,)	
WAREHOUSEMEN AND)	
HELPERS OF AMERICA,)	
)	
Appellants)	

Appeal from the Judgment of the Court of
Common Pleas, Butler County, Civil Division,
at No. A.D. 79-917, Book 116, page 249

BEFORE: BROSKY, MONTGOMERY AND HESTER, JJ.

PER CURIAM: FILED OCTOBER 16, 1986

Judgment for compensatory damages in the
amount of \$51,753.82 affirmed. Judgment for
punitive damages remitted to \$250,000.00, and
affirmed as so modified.

HESTER, J. files a Concurring and
Dissenting Memorandum.

December 15, 1986

James A. McCall, Esq.
25 Louisiana Ave., N.W.
Washington, PA 2001

IN RE: FREEPORT TRANSPORT, INC. V. -
INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN AND
HELPERS OF AMERICA; and LOCAL 538,
GENERAL TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS, AFFILIATED
WITH INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
No. 808 Pittsburgh, 1985

Dear Mr. McCall:

The Court has entered the following Order
of your Application for Reargument filed in
the above-captioned matter: .

"ORDER OF COURT

AND NOW, this 15th day of December, 1986,
the Application for Reargument filed by
International Brotherhood Teamsters,
Chauffeurs, Warehousemen and Helpers of
America is denied.

Per Curiam"

Very truly yours,

/s/ Eleana R. Valechi
DEPUTY PROTHONOTARY

ERV/cw

cc: Robert A. Cohen, Esq.
Ernest B. Orsatti, Esq.
Alexander H. Lindsay, Jr., Esq.
Honorable George Kiester

IN THE COURT OF COMMON PLEAS OF BUTLER
COUNTY, PENNSYLVANIA

FREEPORT TRANSPORT,) CIVIL DIVISION
INC., a corporation)
vs.) A.D.NO. 79-917
) Book 116, page 249
INTERNATIONAL BROTHER-)
HOOD OF TEAMSTERS,)
CHAUFFEURS, WAREHOUSE-)
MEN AND HELPERS OF)
AMERICA, an unincor-)
porated association,)
and its LOCAL TEAM-)
STERS, CHAUFFEURS,)
WAREHOUSEMEN, HELPERS)
AND GARAGEMEN UNION)
LOCAL NO. 538, IB of T,)
CW&H of A)

for the Plaintiff:

Alexander H. Lindsay, Jr., Esq.
Lawrence P. Lutz, Esq.

for the Defendant IBT:

James A. McCall, Esq.
Robert A. Cohen, Esq.

for Defendant L. 538:

Ernest B. Orsatti, Esq.

George P. Kiester, Senior Judge

FINDINGS OF FACT

The parties to this cause of action are Freeport Transport, Inc. hereinafter "Freeport". Plaintiff Local Teamsters, Chauffeurs, Warehousemen, Helpers and Garagemen Union Local No. 538 hereinafter "Local 538", a Defendant and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America hereinafter I.B.T., a Defendant.

The Court makes the following findings of fact:

1. Plaintiff, Freeport Transport, Inc., a Pennsylvania Corporation, and Teamsters Local Union No. 538, an unincorporated labor organization, were parties to a collective bargaining agreement which expired on August 3, 1977.

2. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Help-

ers of America is an unincorporated organization consisting of an unlimited number of Local Unions including Local 538. (Exh. 23)

3. Prior to the expiration of that agreement, the parties engaged in negotiations for purposes of entering into a new agreement.

4. The parties reached an impasse in their negotiations and on August 4, 1977, Local 538's membership went on strike in support of its economic demands.

5. The strike ended on November 19, 1977, when the parties entered into a new collective bargaining agreement.

6. There was considerable violence during the course of the strike.

7. There were threats, assaults and substantial damage to Freeport's equipment and property.

8. Damages to Freeport included the destruction of 140 truck tires, 20 wind-shields and the burning of a GMC tractor. (T. 185-6, 198, 202-3, 239, 269-274, 306-310, 334, 336, 337)

9. Two non-striking employees of Freeport were assaulted and injured by agents of Local 538 and I.B.T. (T. 306-7-8, 612-616, 268)

10. Union members and agents of Local 538 and I.B.T. threatened company officials and non-striking employees with violence on numerous occasions. (T.18-19-21-22-24, 191, 195, 201-2, 209, 231)

11. Striking union members and agents of Local 538 and I.B.T. used sling shots to hurl marbles, rocks and metal bearings at Freeport's trucks and truck terminal building. (T. 27-28-29, 192, 196-7-8, 243-4)

12. Striking union members and agents of Local 538 and I.B.T. damaged Freeport's trucks by smashing windshields, destroying radiators and flattening tires with a sharp object. (T. 203-4, 232-3, 238-9, 186, 198, 204, 332, 334, 336-7, 323-6, 612-616, 618, 306-310)

13. Sharp objects were placed under Freeport's trucks and trailers to puncture tires. These objects resembled a child's jack with 6-penny nails welded together. (T.196)

14. Jack-like puncturing objects were fabricated by a striking union member. (T. 274-5-6)

15. Harassment and violence was directed towards non-striking employees while on the highways along with damage to Freeport equipment both on the highways and at the

terminal. (T. 612-616, 21, 332-3, 19, 331, 336)

16. A striking union member fire-bombed one of Freeport's trucks. (T. 269-274)

17. While being harassed on the highway, damage was caused to Freeport equipment by gun fire. (T. 335-336)

18. A shot-gun blast blew out the picture window at the D. Smetanick residence. (Freeport management) (T.33)

19. At the Freeport terminal, a picket with a hand gun told D. Smetanick, "I'm going to blow your fucking head off." (T.22)

20. Other pickets and Jack Robison were present when the aforementioned threat was made. (T.21-22)

21. Freeport's trucks were harrassed by vehicles operated by pickets passing and then braking and slowing down in front. Another tactic was for a picket to veer his

vehicle in front of a Freeport truck trying to run the truck off the road. (T.21, 332, 333)

22. Raymond Baker was Secretary/Treasurer and chief executive officer of Local 538 at the time of the strike. (T.775)

23. Raymond Baker organized and directed the strike activity and paid the expenses of members on strike duty. (T.266-267)

24. Raymond Baker reported to the union membership specific strike related incidents detailing the role each individual or company representative played. (T.267)

25. When Raymond Baker described how Freeport's driver Morrison was stopped and assaulted, the expression on his face was a "grin" and the "entire membership chuckled." (T.268)

26. On August 4, 1977, the first day of the strike Raymond Baker was present on the picket line with Jack Robison and several union members. (T.18)

27. Jack Robison organized and participated in the organization of the strike at Freeport. (Answer to P's Interrogatory 18, T. 876-878)

28. Mr. Robison was not an employee of Freeport.

29. The first time that Jack Robison was observed by the management of Freeport was at 6:00 a.m., August 4, 1977 when he was seen on the picket line. (T. 18, 343)

30. On the first day of the strike, Mr. Robison harassed a Freeport truck en route to his destination. (T. 19)

31. Mr. Robison threw rocks at Freeport trucks. (T. 331)

32. Mr. Robison harassed Freeport truckers traveling on the public highway. (T. 326-333)

33. Mr. Robison threatened Freeport drivers via CB radio. (T. 326)

34. After a shotgun like blast at Freeport's terminal and a police pursuit Mr. Robison threatened to "get" John Weber, a salesman for Freeport. (t. 344-7)

35. Jack Robison stopped and physically assaulted a non-striking driver of Freeport. At the same time, strikers were smashing the windshield, flattening the tires and putting dirt in the fuel tank of a Freeport truck. (T. 306-310)

36. Later Jack Robison stated to a victim that it was his job with the teamsters "going around beating up people" and that he

"loved it." (T. 311, 316, and that he "loved it" T. 312)

37. Jack Robison offered the victim "around \$3,000 if he would not testify against him." (T. 311)

38. Jack Robison then told the victim that he would kill him if he testified. (T. 311)

39. At criminal Docket C.A. #522 of 1977, Butler County, Jack O. Robison was charged with simple assault and criminal mischief. The incident occurred August 20, 1977 at Petrolia. The assault victim was James C. Morriston. Damage to the windshield of a 1974 White tractor-trailer and the flattening of two tires was charged. Mr. Robison pled guilty and was sentenced to make restitution and to undergo imprisonment in the State Correctional Institution at Greensburg for one to two years.

40. As a result of an evidentiary hearing, the court ordered restitution as follows:

James C. Morriston	\$630.00
Lane Service Co.:	
(a) Repairs to tractor	321.00
(b) Medical bills on behalf of Morriston	206.00

Freeport Transport:	
(a) Temporary repairs to trailer	363.00
(b) Replacement of 13 damaged tires at \$250 per tire	3,250.00

41. The defendant (Jack O. Robison) paid \$2,100 on account of costs and restitution. On May 3, 1979 the arrearages totalled \$2,629.20. The same had not been paid as of December 13, 1984. (T. 312-316)

42. Jack Robison had been an organizer for I.B.T.C.W. & H. of America for a period ending about 1975. (T. 731-2)

43. At an organizational meeting for Freeport's drivers prior to the original

contract, Jack Robison was introduced by Raymond Baker as being sent there by the International. (T. 210-212)

44. The calling card of Jack O. Robison in 1973 was as follows:

[The trial court here reproduced a calling card containing the name of Jack O. Robison Organizer and giving an address of "International Brotherhood of Teamsters, 8550 West Bryn Mawr, Chicago, IL 60631. The calling card also identifies Rolland McMaster as a general organizer and administer of the International.]

(Ps. Exh. 11, T. 290-291)

45. In the spring of 1973 Jack O. Robison was engaged in an attempt to organize McQuaide Trucking for Teamsters Local 110, at that time there was considerable violence and damage to McQuaide property. (T. 285-291)

46. In 1974 Jack Robison was attempting to organize Martin Trucking Company for Local 538 and identified himself as representing the International. (T. 256-258)

47. During the aforementioned organizational drive (Finding of Fack No. 46) an employee of Martin Trucking Company was assaulted by Jack Robison. (T. 259-60)

48. In 1972 the Teamsters with the help of Raymond Baker together with Rolland McMaster, Jack Robison and a Michael Bohanis (Boano) organizers for I.B.T. were attempting to organize Clinton Fuel and Transport. (T. 448-453, 747-8-9)

49. During this period (FF No. 48) the President of Clinton Fuel and Transport was assaulted by Jack Robison and as a result, Jack Robison was charged with criminal assault. (T. 451)

50. Eventually the criminal charge against Jack Robison arising from the incident at FF No. 48-49 was dropped in exchange for the Teamsters discontinuing the organizational drive. (T. 448-465)

51. Jack Robison was a member of Local 538. (T. 809)

52. Acts of strike violence throughout the country by Jack Robison and his affiliation with I.B.T. is known to the F.B.I. and the Office of the U. S. Attorney. (T. 139-143)

53. No search of I.B.T. files was made by Walter J. Shea, International Vice-President and assistant to the General President of I.B.T. to determine if Jack Robison was an employee or agent of I.B.T. in 1977 as claimed by Freeport. (T. 674, 715, 728)

54. Rolland McMaster has been an employee and union organizer for I.B.T. since 1970. (T. 729)

55. In the early 1970's Rolland McMaster was coordinator and director of the Central Conference of Teamsters engaged in an organizing campaign of steel haulers. (T. 729-743)

56. Rolland McMaster employed (and trained) Jack Robison as an organizer for I.B.T. through the Teamsters Central Conference until the organizing committee was terminated in 1975. (T. 731-732, 744-5-6-7)

57. Rolland McMaster at the request of Local 538 participated in a 1977 contract negotiating session with Freeport's representatives and Raymond Baker at Pittsburgh on November 8, 1977. (T. 734-740, 834)

58. At the meeting on or about November 8, 1977 with Rolland McMaster and Raymond Baker, Rolland McMaster told D. Smetanick, of Freeport, that "if we could reach agreement for amnesty for Mr. Robison, there would be no further strike or violence." (T. 42-44)

59. Rolland McMaster indicated to D. Smetanick that "violence and the strike would continue if we couldn't come to some agreement." (T. 43)

60. Rolland McMaster indicated that "he wanted to know why the strike continued and that the purpose of his being there was to make a determination whether the International should continue to fund the strike..." (T. 43)

61. Mr. McMasters had expertise in iron and steel hauling. At the November 8, 1977 meeting he told Freeport that most steel haulers are paid on a percentage method and

that he didn't think their contract fit the type of business they were doing. (T. 735, 834)

62. The only evidence of the participation of Mr. McMaster in the 1977 strike situation was the November 8, 1977 meeting and his earlier association with Jack Robison. (T. 133-6)

63. Jack Cozza was a general organizer for I.B.T. in 1977. (T. 755-756)

64. In January, 1978, Mr. Cozza was a trustee for I.B.T. He was also President of Teamster Local 211. (T. 755)

65. Four meetings were held between representatives of Freeport and Mr. Cozza at the offices of Mr. Cozza in Pittsburgh. These meetings were September 9, 15, 20 and October 20. (T. 758, 763, 765, 766, 35, 884-886)

66. At the first meeting with Mr. Cozza held on September 9, 1977, the discussion included several issues among which was the dropping of charges against Jack Robison and other employees. (T. 36, I.B.T. Exh. 3, 892, 885-892, 900-906)

67. At the second meeting with Mr. Cozza and Mr. Baker on or about September 15 "They seemed to be more concerned about amnesty for Jack Robison than about contractual issues." (T. 37)

68. Mr. Cozza had no other concern about other individuals. If Freeport Transport dropped the charges against Mr. Robison, Mr. Cozza could settle and end the strike. (T. 38-39, 900, 903-4)

69. The third and fourth meetings with Mr. Cozza which occurred on September 20 and October 20, were limited to trying to negotiate amnesty for Jack Robison. Nothing of

substance was discussed although there were a number of unresolved issues at that time. (T. 39-40, 894-5-6-7) I.B.T. Exh. 2)

70. At the third meeting in Mr. Cozza's office, Mr. Cozza informed Local 538 and Freeport that he didn't think that he could be of further help to them in reaching agreement on a contract. (T. 768)

71. Freeport Vice President Daniel Smetanick stated that Mr. Cozza's efforts did not result in a settlement of the strike. There were several negotiating sessions after the last meeting of October 20, 1977 in Mr. Cozza's office. (T. 119)

72. At a meeting with Mr. Cozza, Attorney Cabot, for Freeport after a private conference with Mr. Cozza, advised the representatives of Freeport that "you know you can

settle this thing this evening if you drop the charges." (T. 903-4)

73. The federal mediator who attended the negotiating sessions in the office of Mr. Cozza, told representatives of Freeport a number of times that the strike could be settled if the charges against Mr. Robison were dropped. (T. 900-906)

74. Amnesty for Mr. Robison was the subject at a meeting of Daniel Smetanick and others with Raymond Baker and Tom Fagan at the New Kensington Holiday Inn, Tarentum between September 20, and October 20, 1977. Other members of the union bargaining unit were not present during those meetings. (T.40, 108-113, 383-387)

75. Tom Fagan may have been associated with the Local and International Teamsters in some capacity according to Daniel Smetanick (T. 108-9), but Mr. Baker stated

that Mr. Fagan was President of Joint Council 40 and that he was a very influential man in the Pittsburgh area. (T. 833)

76. The evidence that officers, representatives, agents or employees of either Local 538 or I.B.T. who investigated, encouraged or ratified acts of violence is principally by inference. (T. 382)

77. From the facts already stated the Court finds that Raymond Baker as Secretary/Treasurer and executive officer of Local 538 instigated, encouraged and ratified acts of violence by Local 538 members and Jack Robison against Freeport's non-striking employees, families and property.

78. From the facts already stated the Court finds that I.B.T. instigated, encouraged and ratified acts of violence by Jack Robison and members of Local 538 against

Plaintiff's non-striking employees, families and property.

79. From the facts the Court determines that Jack Robison was a principal perpetrator and leader of the acts of violence.

80. Jack Robison was a potential witness friendly to the Defendants and unfriendly to Freeport. The testimony of Jack Robison would have been material and important to the issues before this Court.

81. There was no explanation for the failure of Local 538 and/or I.B.T. to call Jack Robison as a witness.

82. The Court infers from Defendant's failure either to explain the absence of Jack Robison or to call Jack Robison as a witness that the testimony of Jack Robison would have been unfavorable to the position of both Local 538 and/or I.B.T.

83. The only funds received by Local 538 from I.B.T. during the Freeport strike were out of work benefits to be paid to those Freeport employees on strike and doing picket duty. (T. 872)

84. I.B.T. does not directly control or distribute out of work benefits to those members on strike. (T. 683)

85. The determination as to which Local 538 members would receive benefits was made by Local 538. Benefits were based on whether or not a member was engaged in picketing and had paid his local union dues. (T. 870-1)

86. Jack Robison was not paid strike benefits by Local 538. (T. 871)

87. Freeport established as damages sustained as a result of unlawful strike activities by Local 538 and I.B.T. the following:

- a. The destruction of 140 truck tires.
 - b. Destruction of 20 truck windshields, -\$1,139.54 (T. 575-580) Exh. 18
 - c. Expenses incurred by reason of the assault on Gerald Bayless, \$14,492.00. (T.593)
 - d. Property damage to terminal, \$1,056.49. (T. 569)
 - e. Truck radiators, \$240.00. (T. 563)
 - f. Fire-bombing of a GMC tractor, \$17,000.00. (T. 636)
 - g. Freeport proved damages totalling \$33,931.03.
88. The losses actually sustained by Freeport exceeds \$33,931.03. Freeport lacked records and failed to prove the value of the tires destroyed and the cost of replacing some of the windshields. There is

lacking a reasonable basis for the Court to estimate these damages.

89. In 1977 there were 750 Locals affiliated with I.B.T. (T. 674)

90. Local unions had in excess of 70,000 contracts with employers. (T. 674-5, 694)

91. When a Local of I.B.T. has voted to strike, the I.B.T. pays to the Local "out of work benefits" based on the number of strikers certified by the Local to the I.B.T. (T. 681-683)

92. In 1983 the payment was at the rate of \$45.00 per week for four weeks for each member on strike; increasing to \$55.00 a week for the fifth week. In 1977 the payments were lower but the number of strikes greater. (T. 682-685)

93. I.B.T. collects a per capita tax each month from local unions based on the membership of that Local. (T. 700)

94. In 1984, the per capita per member of each local collected by I.B.T. each month was \$4.15. In 1977 it was a lesser amount. (T. 700)

95. Other sources of I.B.T. income is from properties and stocks. (T. 701)

96. Conferences and joint councils are funded by I.B.T. through the per capita tax. (T. 719)

97. Rolland McMaster stated that I.B.T. had several billions of dollars at its disposal. (T. 43)

CONCLUSIONS OF LAW

1. The burden of proof in an action of trespass brought under Pennsylvania Law against a labor organization or association is the weight of the evidence as provided by an Act of Assembly 1937, June 2, PL. 1198 Section 8 (43 P.S. 206h).

2. Freeport had the burden of establishing by a preponderance of the evidence a reasonable basis for an estimate of the damage considering the nature of the tort and all the surrounding circumstances.

3. Where a witness has important, material information on a principal issue and the relationship of the witness to the party is such that the witness would ordinarily be expected to favor that party, then if the party does not produce his testimony and there is no explanation for the failure to do so, the Court must infer that the testimony would

have been unfavorable to the position of that party.

4. Evidence that Raymond Baker was the Secretary/Treasurer and chief executive officer of Local 538; that he assigned picket duty; that he distributed the expense money to the pickets; that he presided over union meetings during the strike; that he was present during violence; that he described the violence at a union meeting; that he knew those that were engaging in violence; that the members at a meeting presided over by Raymond Baker laughed about the violence and took no action either to discourage or discipline those who engaged in violence; that Jack Robison was well known to Raymond Baker and appeared on the first day of the strike; that Jack Robison actively participated in the picketing with other members of Local 538 with

the tacit approval of Raymond Baker; that Raymond Baker and the members of Local 538 were aware that Jack Robison and some members were engaging in acts of violence; that out of work benefits continued to be paid to members committing acts of violence; that Raymond Baker offered a strike settlement in exchange of amnesty for Jack Robison; that Raymond Baker was aware that representatives of I.B.T. had proffered a settlement of the strike in exchange for withdrawal of the criminal prosecution of Jack Robison; that Local 538 did not explain the failure to call Jack Robison as a witness in support of their position; that it is reasonable to infer that the testimony of Jack Robison would not support the position of Local 538 - that considering all the facts and the reasonable inferences to be drawn therefrom, there was a preponderance of evidence establishing that

Local 538 through its agents authorized, supported and ratified the violent acts perpetrated against Freeport.

5. Evidence that Jack Robison had been employed as an organizer for I.B.T.; that he had engaged in violence and had threatened violence in earlier organizing activities; that his affiliation with I.B.T. and involvement in strike violence was known to the F.B.I.; that his initial appearance was on the first day of the Freeport strike; that he was personally involved in picketing at Freeport terminals and on the highways; that he committed criminal acts in which the property of Freeport was damaged and non-striking employees were threatened and injured; that the expenses of picketing strikers were paid by I.B.T. through Local 538; that admitted representatives of I.B.T.

were aware of the violence and offered Freeport a settlement of the strike in exchange for withdrawal of criminal charges against Jack Robison; that I.B.T. failed to call Jack Robison as a witness and did not explain his absence; that considering all the facts and the reasonable inferences to be drawn therefrom there was a preponderance of evidence establishing that I.B.T. through its' agents had authorized, supported and ratified the violent acts perpetrated against Freeport.

6. The conduct of the Defendants was wilful, malicious, wanton, oppressive and outrageous.

7. Plaintiffs should be assessed punitive damages in such an amount as will punish the Defendants and deter them and others from the type of conduct described in the record and the findings of fact.

M

8. Plaintiff has introduced no evidence as to the resources of Local 538.

9. There is an absence of facts upon which the Court can award to Plaintiff punitive damages against Local 538.

10. Based on the facts, the Court concludes that I.B.T. has tremendous resources and should pay Freeport a substantial sum in punitive damages.

VERDICT

AND NOW, December 27, 1984 after trial before the Court without jury based upon the record together with the findings of fact and conclusions of law which are attached the Court finds in favor of Freeport Transport, Inc. and against Local 538, Local Teamsters, Chauffeurs, Warehousemen, Helpers and Garagemen and International Brotherhood of Teamsters, Chauffeurs, Wahrehousemen and

Helpers of America in the sum of \$33,931.03
with interest thereon from November 19, 1977
as compensatory damages

AND

in favor of Freeport Transport, Inc. and
against International Brotherhood of
Teamsters, Chauffeurs, Warehousemen and
Helpers of America in the sum of \$500,000
punitive damages.

The Prothonotary shall forthwith notify
the attorneys of record of the date of filing
of this verdict and shall forward copies of
the same to said attorneys.

BY THE COURT,

/s/ George P. Kiester
GEORGE P. KIESTER
Senior Judge
Specially Presiding

IN THE COURT OF COMMON PLEAS OF
BUTLER COUNTY, PENNSYLVANIA

FREEPORT TRANSPORT, INC., a corporation,
Plaintiff

vs.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUF-
FEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, an
unincorporated association, and its LOCAL TEAM-
STERS, CHAUFFEURS, WAREHOUSEMENT HELPERS AND
GARAGEMEN UNION LOCAL NO. 538, IB of T, CW. &
H of A

CIVIL DIVISON -- LAW
A.D. No. 79-917
Book 116, page 249

For the Plaintiff: Alexander H. Lindsay, Jr.
Lawrence P. Lutz

For Defendant IBT: James A. McCall
Robert A. Cohen

For Defendant L. 538: Ernest B. Orsatti
George P. Kiester, Senior Judge

OPINION

The parties to this cause of action
are hereafter referred to as follows:

Plaintiff -- "Freeport"

Defendant -- "Local 538"

Defendant -- "I.B.T."

Presently before the Court are the Post-Trial Motions of Local 538 and I.B.T.

In a trial before the Court without a jury the Court on December 27, 1984 entered a verdict for compensatory damages in favor of Freeport and against Local 538 and I.B.T. for \$33,931.03 with delay damages from November 19, 1977. Punitive damages of \$500,000.00 was awarded against I.B.T. only.

It is noted that the Court filed 97 findings of fact and 10 conclusions of law in rendering a verdict. They include references to the extensive record.

A complete understanding of the case requires a study of the record, the findings of fact and law, and the legal briefs of the parties. This opinion is devoted to the key legal issues raised by defendants.

The cause of action is in trespass claiming damages against both defendants for property damaged and destroyed during a 1977 union strike. The verdict does not include plaintiff's loss caused by the destruction of 140 truck tires. There was no evidence offered as to the condition of the tires destroyed. The Court sustained defense objections to testimony as to the cost of new tires.

ISSUES

1. Does the Pennsylvania statute prohibiting presumptions of law and fact in a civil action against a labor organization participating or interested in a labor dispute - prohibit reasonable inferences otherwise deducible in non-labor cases?

The statute provides:

"No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute as herein defined, shall be held respon-

sible or liable in any civil action at law or suit in equity or in any criminal prosecution for the unlawful acts of individual officers, members or agents, except upon proof beyond a reasonable doubt in criminal cases, and by the weight of evidence in other cases, and without the aid of any presumptions of law or fact, both of - (a) the doing of such acts by persons who are officers, members or agents of any such association or organization; and (b) actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof by such association or organization. 1937, June 2, P.L. 1198, Section 8 [43 Pa. C.S.A. 206h]

DISCUSSION

A presumption is a rule of law such as a presumption of due care, a presumption of innocence, a presumption of death, a presumption of undue influence, or a presumption of a gift. It is a mandatory deduction which the law expressly directs to be made. In the absence of evidence to the contrary a presumption is conclusive.

On the other hand an inference is a permissive deduction. It is something that may be deduced from other facts.

As stated by the Superior Court:

"Inference is a process of reasoning by which a fact or proposition sought to be established (here the prisoner's knowledge of the presence of tools in the automobile) is deduced as a logical consequence from other facts, or a state of facts, already proved or admitted... Comm. v. Whitman, 199 Pa. Superior Ct. 631, 634. See also Words & Phrases

In the instant case there was no direct evidence that Jack Robison was an agent either of the Local or the International in the violence against Freeport but there was circumstantial evidence based on the prior relationships between Jack Robison and defendants, the involvement of Jack Robison in similar I.B.T. labor disputes; the attempts to negotiate amnesty for Jack Robison and the

failure to call Jack Robison as a defense witness. From these and other facts in the record the Court inferred that the violence perpetrated by Jack Robison and others was authorized, approved and ratified by defendants.

In a criminal prosecution circumstantial evidence standing alone may be sufficient to prove a defendant's guilt. Such was the Whitman case (*supra*).

In the case before this Court there is a preponderance of evidence that these labor organizations authorized, approved or ratified the violence against Freeport. Such a conclusion makes good sense.

If, as contended by defendants, the Act of Assembly (43 Pa. C.S.A. 206(h)) mandates only direct or positive evidence of liability then the cause of action against these defendants must fail. In the opinion of

the Court the Act of Assembly does not prohibit the jury or a judge in the exercise of common sense to make such reasonable inferences from the established facts as is permissible in similar cases not involving a labor organization.

ISSUE

Does the burden of proof in a tort action against a labor organization require a preponderance of the evidence or clear proof?

The controlling statute is quoted in full [43 Pa. C.S.A. 206(h)] supra.

DISCUSSION

The Court applied the preponderance of evidence standard in determining that defendants authorized, supported and ratified the violence against Freeport.

The cases cited by the parties do not directly address the question of whether "clear proof" or weight of the evidence is the standard for measuring liability in these cases under Pa. law. Ballenlines Law Dictionary defines weight of evidence as "the effect of evidence as proof; the probative force of evidence. 30 Am. 12d Ev. 1080."

Weight of the evidence simply means that proof on one side of a cause outweighs the proof on the other side. It is the preponderance of the evidence. A preponderance of the evidence is something less than the clear and satisfactory evidence that it required to prove fraud. Iuranity v. Prudential Ins. Co. of Am., 261 Pa. 390, 401-2 (1918). Snyderwine vs. McGrath, 343 Pa. 245, 250 (1941).

Do the facts together with the reasonable inferences to be deduced therefrom established by a preponderance of the credible evidence that Local 538 and I.B.T. authorized, supported or ratified the violence against Freeport?

This question was answered in the affirmative by the Court based on the evidence and 97 findings of fact. Counsel for the parties have exhaustively examined the evidence from the point of view of their respective clients.

The strike violence by members or non-members or agents was not the responsibility either of Local 538 or I.B.T. unless authorized, supported or ratified. The facts established that the President of Local 538 directed the strike activity and encouraged the violence. I.B.T. funded the picket duty where the violence occurred. Jack Robison had

been associated with I.B.T. He had a record of violence with I.B.T. He was not an employee of Freeport. Jack Robison appeared at the beginning of the strike. He was a principal perpetrator of violence and was prosecuted as a criminal. As in the past I.B.T. offered strike relief in exchange for amnesty for Jack Robison.

All the facts and circumstances together with the reasonable inferences deducible therefrom establish a preponderance of evidence in support of the causes of action of Freeport against Local 538 and I.B.T.

ISSUE

Is Freeport entitled to delay damages under Rule 238 of the Rules of Civil Procedure?

DISCUSSION

There is no evidence in the record that either Local 538 or I.B.T. made an offer of settlement to Freeport at any time prior to the trial. Under Rul 238 delay damages in this action are mandatory.

The rule became effective 120 days after December 16, 1978. The complaint was filed September 25, 1979. In accordance with sub-paragraph (f) of Rule 238 delay damages in the instant case are computed from September 25, 1979 to December 27, 1984 the date the verdict was entered. Delay damages are computed at the rate of 10% per annum and are not compounded (Rule 238(a)(1)(2)). The verdict will be amended to reflect the corrected amount of delay damages, to-wit \$17,822.79.



IN THE COURT OF COMMON PLEAS OF
BUTLER COUNTY, PENNSYLVANIA

FREEPORT TRANSPORT, INC., a corporation,
Plaintiff

vs.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUF-
FEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, an
unincorporated association, and its LOCAL TEAM-
STERS, CHAUFFEURS, WAREHOUSEMENT HELPERS AND
GARAGEMEN UNION LOCAL NO. 538, IB of T, CW. &
H of A

CIVIL DIVISON -- LAW

A.D. No. 79-917

Book 116, page 249

AMENDED VERDICT

AND NOW, May 9, 1985 the objections
to the findings of fact and conclusions of law
are dismissed.

The verdicts for compensatory
damages and punitive damages are affirmed.

- Delay damages on the verdict for com-
pensatory damages are recomputed from Septem-
ber 25, 1979 to December 27, 1984 and amount
to \$17,822.79.

It is ordered that an amended verdict be entered in favor of Freeport Transport, Inc., Plaintiff and against International Brotherhood of Teamsters and Local No. 538, defendants for compensatory damages in the total sum of \$51,753.82.

A final verdict for punitive damages inthe amount of \$500,000.00 shall be entered in favor of Freeport Transport, Inc., Plaintiff and against International Brotherhood of Teamsters, Defendant.

BY THE COURT,

/s/ George P. Kiester

Senior Judge
Specially Presiding

May 9, 1985, copy of Order mailed to Alexander H. Lindsay, Jr., James A. McCall, Robert A. Cohen, Ernest B. Orsatti, and R. Scott Mahood



Supreme Court, U.S.

FILED

SEP 20 1990

JOSEPH F. SPANOL, JR.
CLERK

(2)
No. 90-325

IN THE
Supreme Court of the United States
OCTOBER TERM, 1990

FREEPORT TRANSPORT, INC.,
Petitioner,
v.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA; and LOCAL 538, GENERAL TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN, AND HELPERS OF AMERICA,
Respondents.

On Petition for a Writ of Certiorari
to the Supreme Court of Pennsylvania

INTERNATIONAL BROTHERHOOD OF TEAMSTERS'
BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

- 1. Whether the State Supreme Court Decision Raises Federal Question Jurisdiction?**
- 2. Whether This Court Should Substitute Its Judgment On The Facts For That Of The State Supreme Court?**

LIST OF PARTIES TO THE PROCEEDING

The International Brotherhood of Teamsters, Chauf-feurs, Warehousemen and Helpers of America and Local 538, General Teamsters, Chauffeurs, Warehousemen and Helpers, affiliated with the International Brotherhood of Teamsters, Warehousemen and Helpers of America were defendants in the Court of Common Pleas of Butler County, Pennsylvania; appellants in both the Superior Court of Pennsylvania and the Supreme Court of Pennsylvania; and the respondents in this Court.

Freeport Transport, Inc. was a plaintiff in the Court of Common Pleas of Butler County, Pennsylvania; an appellee in the Superior Court of Pennsylvania; and an appellee and cross-appellant in the Supreme Court of Pennsylvania; and is petitioner in this Court.

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IN THE
Supreme Court of the United States
OCTOBER TERM, 1990

No. 90-325

FREEPORT TRANSPORT, INC.,
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v.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA; and LOCAL 538, GENERAL TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN, AND HELPERS OF AMERICA,
Respondents.

**On Petition for a Writ of Certiorari
to the Supreme Court of Pennsylvania**

**INTERNATIONAL BROTHERHOOD OF TEAMSTERS'
BRIEF IN OPPOSITION**

The petitioner, Freeport Transport, Inc., has prayed that a Writ of Certiorari issue to review the judgment of the Supreme Court of Pennsylvania in this case.

OPINIONS BELOW

The Findings of Fact, Conclusions of Law, and Verdict of the Court of Common Pleas of Butler County, Pennsylvania are not officially reported, but are reprinted in the Appendix to the Petition. The Opinion of the Superior Court of Pennsylvania is reported at 362 Pa. Super. 628, 520 A.2d 67 (1986); it is reprinted in the Appen-

dix to the Petition. The Opinion of the Supreme Court of Pennsylvania is reported at 568 A.2d 151 (Pa. 1990) and is reprinted in the Appendix to the Petition.

JURISDICTION

The Court lacks jurisdiction to review the Supreme Court of Pennsylvania's decision. The decision by Pennsylvania's highest court does not draw in question the validity of a statute of the United States; does not challenge a state statute as being repugnant to the laws of the United States; and does not raise any title, right, privilege or immunity established by a law of the United States. Contrary to the Petition, no jurisdiction under 28 U.S.C. Section 1257(3) exists in this case.

STATUTES INVOLVED

This case involves Section 8 of the Pennsylvania Labor Anti-Injunction Act, Act of June 2, 1937, P.L. 1198, No. 308, 43 P.S. 206(h), which provides that:

No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute as herein defined, shall be held responsible or liable in any civil action at law or suit in equity or in any criminal prosecution for the unlawful acts of individual officers, members or agents, except upon proof beyond a reasonable doubt in criminal cases, and by the weight of evidence in other cases, and without the aid of any presumptions of law or fact, both of —(a) the doing of such acts by persons who are officers, members or agents of any such association or organization; and (b) actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof by such association or organization.

STATEMENT OF THE CASE

Pursuant to its certification in 1974 by the National Labor Relations Board, Local 538, General Teamsters, Chauffeurs, Warehousemen and Helpers, affiliated with the International Brotherhood of Teamsters ("Local 538") became the exclusive bargaining representative for the drivers and mechanics of Petitioner Freeport Transport, Inc. ("Freeport"), a Pennsylvania corporation. Freeport and Local 538 negotiated and became the only signatories to their initial collective bargaining agreement, covering the period September 16, 1974 to August 3, 1977.

In June 1977, Local 538 and Freeport commenced negotiations for a second bargaining agreement to replace the one which was scheduled to expire on August 3, 1977. When the parties failed to settle a contract before the expiration date, Local 538's members unanimously voted to commence a strike which began on August 4 and lasted until November 19, 1977.

Freeport, on September 25, 1979, filed this action against Local 538 and the International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America ("IBT") to recover alleged damages resulting from the strike. Local 538 and the IBT separately sought to have the case removed from state to federal court. However, the Court of Common Pleas of Butler County, Pennsylvania denied the removal petitions because the case involved an injunction against alleged strike line violence.

Following the trial, the Court of Common Pleas found in favor of Freeport and against Local 538 and the IBT; awarded a judgment for compensatory damages in the amount of \$51,753.82 against both union defendants; and punitive damages against the IBT in the amount of \$500,000.00. Separate appeals were filed by the IBT and Local 538 to the Superior Court of Pennsylvania. The Superior Court affirmed the judgment for compensatory

damages entered in favor of Freeport against both the IBT and Local 538, but modified the judgment for punitive damages against the IBT, by reducing the award from \$500,000.00 to \$250,000.00.

The Superior Court, in its Memorandum of October 15, 1986 (reprinted in the Appendix to the Petition), held that the "IBT's liability was based on the actions of its agent, Jack Robinson [Robinson], not on the actions of Local 538 personnel." The Superior Court rejected the IBT's argument that Section 206(h) of the Pennsylvania Labor Anti-Injunction Act required that union liability for actions of individual officers, members or agents, be based on "clear and convincing" proof that the union actually participated in, or actually authorized such acts, or ratified such acts after actual knowledge thereof by the union. In rejecting the IBT's argument, the Superior Court stated:

Pennsylvania law is to the contrary. *Fife v. Great Atlantic & Pacific Tea Co.*, 356 Pa. 265, 268, 52 A.2d 24, 34 (1947) held that a union was not liable for acts unless it can be shown, *by a preponderance of the evidence*, that the acts were done by officers, agents or members, and that the union participated, authorized or ratified such acts. (Emphasis added)

Local 538 and the IBT filed separate appeals of the Superior Court opinion on the issue of liability, while Freeport appealed the Superior Court's modification of the punitive damage award. In response to these appeals, the Pennsylvania Supreme Court issued its opinion, on January 3, 1990, stating that the Court "granted allocatur [on the parties' appeals] to review the matter in light of our recent decision in *Gajkowski v. International Brotherhood of Teamsters*, 519 Pa. 320, 548 A.2d 533 (1988)." (See Pa. Supreme Court decision in the Appendix to the Petition).

The Pennsylvania Supreme Court's *Freeport* decision further stated that "[i]n *Gajkowski*, we addressed the

issue of the liability of a union for injuries arising out of violence during strikes under Section 8 of Pennsylvania Labor Anti-Injunction Act . . ." According to the State Court, "Section 8 of the Pennsylvania Act is substantially similar to the language of Section 6 of the Norris-La Guardia Act, 29 U.S.C. Section 106, which has been interpreted by the U.S. Supreme Court to preclude the use of either a standard agency or respondeat superior analysis to hold a union vicariously liable for the torts of its officers, members, and agents."

The State Supreme Court decision in *Freeport* stated:

"[w]e concluded in *Gajkowski*, and now reiterate, that, as does Section 6 of the Norris-LaGuardia Act, Section 8 of Pennsylvania Anti-Injunction Act requires a higher showing than the common law rules of agency to establish a union's liability. Imposing a more stringent standard to establish the liability of a union for damages resulting from unlawful acts committed during a strike advances the policy underlying Section 8 of the Pennsylvania Anti-Injunction Act to protect the unions from the potential crippling effect of lawsuits premised on a showing of fault based on mere agency."

In conclusion, the Pennsylvania Supreme Court held that Section 8 of the Pennsylvania Anti-Injunction Act requires that union liability for alleged unlawful acts be predicated on "clear proof" of participation in, authorization, or ratification of such acts after actual knowledge. According to the State Supreme Court, "[r]eview of the record including the extensive findings of fact made by the trial judge fails to establish the clear proof necessary to support a finding of liability of IBT". With regard to the acts of Jack Robison, the State Supreme Court held that "it is clear that the appellee [Freeport] simply did not establish that IBT actively participated in or ratified the actions of Robinson [Robison] or other individual participants."

In its petition for writ of certiorari, Freeport seeks to have this Court substitute its judgment for that of the Pennsylvania Supreme Court in interpreting the meaning of the state statute and in determining whether the facts establish "clear proof" evidence for union liability.

REASONS FOR DENYING THE WRIT

I. THE STATE SUPREME COURT DECISION DOES NOT RAISE FEDERAL QUESTION JURISDICTION

It is a well established principle of this Court that the petitioner bears the burden of establishing federal question jurisdiction for this Court to review a judgment of the highest court of a state. *Durley v. Mayo*, 351 U.S. 277, 281, 100 L.Ed. 1178, 76 S.Ct. 806 (1956); *Michigan v. Long*, 463 U.S. 1032, 1042, n.8, 77 L.Ed 2d 1201, 103 S.Ct. 3459 (1983). In the case at bar, Petitioner Freeport cites 28 U.S.C. § 1257(3) as the basis for this Court's jurisdiction, but fails to demonstrate that the Pennsylvania Supreme Court's decision denies Petitioner any right or privilege guaranteed by federal law.

To determine whether jurisdiction exist to review an opinion of the highest court of a state, this Court has held that "[i]f the state court decision indicates clearly and expressly that it is alternatively based on bona fide separate, adequate, and independent grounds, we, of course, will not undertake to review the decision." *Michigan v. Long*, 463 US *supra* at 1041. The mere reliance on federal precedent as guidance in a state court opinion does not warrant review by this Court. *Id.*

In the instant case, the Pennsylvania Supreme Court clearly stated in its opinion that it granted "allocatur" on the appeals of the IBT, Local 538, and Freeport to review the issues in light of its recent decision in *Gajkowski v. International Brotherhood of Teamsters*, 519 Pa. 320, 548 A.2d 533 (1988).

In *Gajkowsik, supra* at 858, the Pennsylvania Supreme Court reiterated its holding in *Philadelphia Marine Trade Association v. International Longshoremen's Association*, 453 Pa. 43, 308 A.2d 98 (1973) for determining union liability for alleged unlawful acts:

"For a labor organization to be liable for 'participation' pursuant to Section 8 of the Anti-Injunction Act, a jury must find that (1) the acts were committed by officers, members or agents of the organization and (2) the organization actually participated upon clear proof. *Philadelphia Marine, supra* at 52, 308 A.2d at 103" [citations omitted]

The state Supreme Court, in *Gajkowski* at 856, articulated a sound basis for the higher standard required by the state statute:

"Protecting unions from damage awards which would impinge upon the collective rights of workers is the clear import of Section 8. *Supra* at 855. The protection is available regardless of the theory that the plaintiff pursues. The purpose of this section's higher standard of proof in civil actions is the protection of the worker's right to collective bargaining without exposing his union to the higher cost engendered by the agency notion of *respondeat superior*. Since the union generally has no pool of profits with which to withstand the impact of unanticipated and costly damage awards, it could well be destroyed by an inadequately established claim."

The Pennsylvania Supreme Court in *Gajkowski* and in its *Freeport* decision interpreted Section 206(h) of the Pennsylvania Anti-Injunction Act as intended to have the same purpose as Section 6 of the Norris-LaGuardia Act, 29 U.S.C. § 106.¹ The State Supreme Court pro-

¹ Section 6 of the Norris-LaGuardia Act states:

"No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, mem-

ceeded to analyze the relevant facts and issued "a plain statement" setting forth a separate, adequate and independent basis for its opinion, as required by *Michigan v. Long, supra* at 1041. In this regard, the Pennsylvania Supreme Court stated:

"In the instant appeals, both the IBT and Local 538 contend that there was insufficient evidence to establish their liability for the violent and destructive acts which occurred during the strike. To establish the liability of a labor organization for participation under Section 8 of the Anti-Injunction Act, the fact finder must determine (1) that the acts were committed by officers, members, or agents of the organization and (2) the organization actually participated in, authorized, or ratified such acts after actual knowledge thereof. A finding of participation must be predicated upon clear proof and may be based upon circumstantial evidence. In determining whether a labor organization has actually participated in the commission of an act, the number of persons involved, the status of those persons in the organization, awareness of the acts, and the organization's ability to exercise control over the acts, are all relevant considerations.

Review of the record including the extensive findings of fact made by the trial judge fails to establish the clear proof necessary to support a finding of liability of IBT.

This Court has acknowledged that it is bound by the interpretations of state law by a state's highest court. *O'Brien v. Skinner*, 414 U.S. 524, 531, 38 L.Ed 2d 702, 94 S.Ct. 740 (1974); *California v. Harold Freeman*, 488 U.S. —, 102 L.Ed 2d 957, 109 S.Ct. 854 (1989).

As the Pennsylvania Supreme Court's opinion at issue herein constitutes an interpretation of state law and con-

bers or agents, except upon *clear proof* of actual participation in, or actual authorization of, such acts or of ratification of such acts after actual knowledge thereof." [Emphasis added]

tains a "plain statement" supporting its conclusion which is independent of federal law, this Court lacks federal question jurisdiction to review the opinion. Accordingly, the petition for writ of certiorari should be denied.

II. PETITIONER SEEKS TO HAVE THIS COURT SUBSTITUTE ITS JUDGMENT ON THE FACTS FOR THAT OF THE STATE SUPREME COURT

This Court will not substitute its judgment for that of the state when it becomes necessary to analyze the evidence for the purpose of determining whether it supports the findings of a state court. *Garner v. Louisiana*, 386 U.S. 157, 166, 7 L.Ed. 2d 207, 82 S.Ct. 248 (1961). Customarily, this Court accords "great weight to the views of the state's highest court" on state-law matters and "accept the factual findings of state courts in the absence of exceptional circumstances." *324 Liquor Corp. v. Duffy*, 479 U.S. 335, 351, 93 L.Ed 2d 667, 107 S.Ct. 720 (1987) and cases cited therein.

Following an extensive review of the trial court's findings of fact, the Pennsylvania Supreme Court stated:

While the actions of the various individuals as cited above were abhorrent, the record fails to disclose any evidence connecting IBT to the individual incidents of violence. With regard to IBT, the actual knowledge and assent under Section 206(h) of the Pennsylvania Act is simply lacking. While certainly circumstantial evidence can be used to establish participation and ratification, that circumstantial evidence must establish clear proof of the facts being offered. This record does not provide such clear proof in the case of IBT.

In its petition, Freeport seeks to have this Court substitute its view of the facts for that of the Pennsylvania Court. The petition sets forth a detailed re-argument of the facts and maintains that the State Court erred by not finding "clear proof" of union liability. Petitioner

makes no effort to establish "exceptional circumstances" warranting this Court not to accept the factual findings of the state court.

CONCLUSION

For the foregoing reasons, the Petition for Certiorari to the Pennsylvania Supreme Court should be denied.

Respectfully submitted,

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